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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF ILLINOIS  
4 EASTERN DIVISION

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4 VISHVA DESAI,

5 Plaintiff,

6  
7 -against- No. 11C1925

8 ADT SECURITY SERVICES, INC.,

9 et al.,

Defendants.

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10  
11 June 19, 2014

12 9:10 a.m.

13  
14 Deposition of JOSEPH BAMIRA,  
15 pursuant to notice and subpoena, at the  
16 offices of Veritext Legal Solutions,  
17 301 Northeast 51st Street, Boca Raton,  
18 Florida, before Jack Finz, a Shorthand  
19 Reporter and Notary Public within and  
20 for the State of Florida.  
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<p style="text-align: right;">Page 2</p> <p>1 2 APPEARANCES: 3 C. SANDERS McNEW, ESQ. SARA GOLDBERG, ESQ. 4 McNEW P.A. Attorneys for Defendant 5 ADT SECURITY SERVICES, INC. 2385 New Executive Center Drive 6 Suite 100 Boca Raton, FL 33431 7 8 9 JAMES K. SCHULTZ, ESQ. SESSIONS FISHMAN NATHAN &amp; ISRAEL LLC Attorneys for Third-Party Defendant 10 THE ELEPHANT GROUP 55 West Monroe Street 11 Suite 1120 Chicago, IL 60603-5130 12 13 ALSO PRESENT: 14 HANNAH S. LIM, ESQ. Chief Litigation Counsel ADT Security Services 15 1501 Yamato Road Boca Raton, FL 33431 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 JOSEPH BAMIRA 2 groundrule. For the purposes of the 3 discussion, can we talk about Elephant 4 Group and Saveology together as Elephant 5 Group? 6 A. Absolutely, yes. 7 Q. And then if there is an answer 8 that you have that for some reason 9 depends on a distinction between one or 10 the other, you will make that for me? 11 A. Yes, sir. 12 Q. Tell me, how many people 13 worked in the compliance department at 14 Elephant Group? 15 A. I don't know the exact number, 16 and it varied from time to time. 17 Somewhere between 15 to 20. 18 Q. Did they sit together in a 19 part of the office? 20 A. They sat together in a part of 21 an office, yes. 22 Q. Was there a sign that said 23 compliance? 24 A. No. 25 Q. Can you give me names of the</p>
<p style="text-align: right;">Page 3</p> <p>1 JOSEPH BAMIRA 2 JOSEPH BAMIRA, 3 having been first duly sworn by the 4 Notary Public (Jack Finz), was 5 examined and testified as follows: 6 EXAMINATION BY 7 MR. McNEW: 8 Q. Can you state your full name 9 for the record, please. 10 A. Yes. Joseph Bamira. 11 Q. And your address? 12 A. 15 Shadowlawn Drive, Oakhurst, 13 New Jersey. 14 Q. Have you been deposed before? 15 A. Yes. 16 Q. So I will spare you a lengthy 17 set of instructions, but if you don't 18 understand something that I ask you, 19 please ask me to clarify. 20 And I'm sure your lawyer has 21 already told you this, but you needn't 22 speculate. If you don't know an answer, 23 just say you don't know. That's fine. 24 My first question to you, how 25 many people worked in -- let's set up a</p>	<p style="text-align: right;">Page 5</p> <p>1 JOSEPH BAMIRA 2 people who worked there? 3 A. Well, the guy who was in 4 charge of it, let's say, one of them was 5 James Flynn. And then there was a girl 6 by the name of -- working there, there 7 were different parts of the compliance. 8 So if you care about it, I will describe 9 it to you. 10 There was a Nikki. I don't 11 remember the last name. And so I don't 12 remember the names. I didn't work 13 directly with them on a day-to-day basis. 14 Q. Who did? 15 A. There was a Mary Couton. 16 Q. Can you spell the last name, 17 please? 18 A. I'm not sure. 19 Q. With a K or C? 20 A. C. I'm not quite sure how she 21 spelled it. 22 Q. You said that you didn't work 23 directly with compliance. To whom did 24 the compliance department report? 25 A. Usually the ones that was the</p>

<p style="text-align: right;">Page 6</p> <p>1 JOSEPH BAMIRA</p> <p>2 head of the compliance department. I</p> <p>3 mean, in the last four or five months</p> <p>4 before I left it was pretty much me. And</p> <p>5 before that they had a head of the</p> <p>6 compliance department, and he usually --</p> <p>7 I was not the head of the compliance</p> <p>8 department, but in the corporate</p> <p>9 structure, because it had to do with</p> <p>10 legal issues, they talked to me if there</p> <p>11 were legal issues, such as should we fire</p> <p>12 someone, should we not fire someone, what</p> <p>13 were the issues, stuff like that.</p> <p>14 Q. One more groundrule. For the</p> <p>15 purposes of this deposition, let's assume</p> <p>16 that my questions are all going to the</p> <p>17 time before the Desai lawsuit was served,</p> <p>18 which I think was March 2011. That will</p> <p>19 make things easier. I understand that</p> <p>20 things changed a bit after the lawsuit.</p> <p>21 A. They have.</p> <p>22 Q. So let's focus on the time</p> <p>23 before the lawsuit. And, again, if your</p> <p>24 answer leads you into post-lawsuit</p> <p>25 things, just flag that for me. But we</p>	<p style="text-align: right;">Page 8</p> <p>1 JOSEPH BAMIRA</p> <p>2 particular contract.</p> <p>3 Q. So if they weren't involved in</p> <p>4 the enforcement of any particular</p> <p>5 contract, what were they involved in?</p> <p>6 A. Let's say somebody complains,</p> <p>7 or two -- there's two separate types of</p> <p>8 structures. A, there was a team which</p> <p>9 listened in to calls and see how the</p> <p>10 calls were, and did the agents answer it</p> <p>11 correctly.</p> <p>12 Then there were subsequently</p> <p>13 we replaced it with a voice recognition</p> <p>14 system that analyzed pretty much what all</p> <p>15 the calls and see if the calls were</p> <p>16 legit. Every call, or 60, 70 percent of</p> <p>17 the calls, it would listen, and it's the</p> <p>18 software, and then people would listen</p> <p>19 in, if there were infractions, and report</p> <p>20 the infractions.</p> <p>21 Then there were people, and</p> <p>22 before that they would listen manually.</p> <p>23 It didn't change it because of Desai,</p> <p>24 because we always looked to make sure</p> <p>25 things are being done correctly. And</p>
<p style="text-align: right;">Page 7</p> <p>1 JOSEPH BAMIRA</p> <p>2 will assume we are talking about 2011.</p> <p>3 So what I hear you telling me</p> <p>4 is that you were the person in the</p> <p>5 company responsible for the resolution of</p> <p>6 legal issues. Is that correct?</p> <p>7 A. Correct. I managed it. I was</p> <p>8 not the attorney, because I am not. But,</p> <p>9 yes, I dealt with legal issues of the</p> <p>10 company.</p> <p>11 Q. You said that there were</p> <p>12 different parts of compliance, and I want</p> <p>13 to come back to that and break that down.</p> <p>14 Was the compliance department</p> <p>15 responsible for enforcing compliance with</p> <p>16 the ADT contract?</p> <p>17 A. The compliance department did</p> <p>18 not do the actual day-to-day, but they</p> <p>19 more reacted -- again, it depends before</p> <p>20 and after. And I'm not quite sure how it</p> <p>21 evolved, because the compliance</p> <p>22 department did not react really to the</p> <p>23 Desai issue, because it was not an issue</p> <p>24 of compliance per se. So they did not</p> <p>25 work on the actual enforcement of any</p>	<p style="text-align: right;">Page 9</p> <p>1 JOSEPH BAMIRA</p> <p>2 primarily because of TCPA rules.</p> <p>3 Then there are things, because</p> <p>4 of the TCPA rules, that I made sure that,</p> <p>5 let's say, Daphne is aware that what</p> <p>6 websites have to include, what they don't</p> <p>7 have to include. Let's say, I will give</p> <p>8 you an example, she got instructions that</p> <p>9 each website is up, which let's say like</p> <p>10 ADT, that the website, that the people</p> <p>11 who work for us, they keep the records,</p> <p>12 keep the calls, that they are scrubbing</p> <p>13 the calls, especially against the</p> <p>14 internal ADT situation, if we talk about</p> <p>15 ADT, that the website includes the right</p> <p>16 wording, that people ask -- you know,</p> <p>17 they ask people to opt in, however they</p> <p>18 did. But there is a wording saying that</p> <p>19 let's say they agree that they will be</p> <p>20 called specifically for security, home</p> <p>21 security companies. We had it even</p> <p>22 people should be called for, even though</p> <p>23 none of them did not allow that, but just</p> <p>24 in case, let's say for robocalling, which</p> <p>25 you can ask for specific separate</p>

<p style="text-align: right;">Page 10</p> <p>1 JOSEPH BAMIRA</p> <p>2 permission.</p> <p>3 So there were rules and</p> <p>4 regulations, and I made sure that we were</p> <p>5 aware they were implemented, and if there</p> <p>6 was a complaint, I asked her to check if</p> <p>7 everybody kept the rules. So we had</p> <p>8 pretty good tabs on did people keep the</p> <p>9 rules or didn't.</p> <p>10 From time to time ADT would</p> <p>11 ask questions, and then we would go, and</p> <p>12 we would go to the vendor and he would</p> <p>13 supply us with the information, and we</p> <p>14 reacted to that.</p> <p>15 Q. A big piece of the work with</p> <p>16 the compliance department was monitoring</p> <p>17 phone calls?</p> <p>18 A. Correct.</p> <p>19 Q. Were those phone calls that</p> <p>20 were being made or received by Elephant</p> <p>21 Group or by other companies?</p> <p>22 A. Calls received by us.</p> <p>23 Q. So they were not involved in</p> <p>24 listening to phone calls made by</p> <p>25 third-party vendors that you would engage</p>	<p style="text-align: right;">Page 12</p> <p>1 JOSEPH BAMIRA</p> <p>2 your name, on the national, that's okay,</p> <p>3 so you get permission.</p> <p>4 However, they might have put</p> <p>5 themselves on ADT's internal do not call</p> <p>6 list. So even though they called us and</p> <p>7 we called them back, I wanted to make</p> <p>8 sure that nobody calls, even if you get</p> <p>9 permission, if he was on the internal ADT</p> <p>10 do not call list.</p> <p>11 Q. So the calls that were being</p> <p>12 monitored by your compliance department,</p> <p>13 were any of those calls outbound calls?</p> <p>14 A. No. We didn't make outbound</p> <p>15 calls.</p> <p>16 Q. And they did not monitor the</p> <p>17 calls made by third-party vendors, or</p> <p>18 received by third-party vendors?</p> <p>19 A. That is true, in the ADT case.</p> <p>20 In the other we didn't have people make</p> <p>21 calls for us.</p> <p>22 Q. So for the purposes of</p> <p>23 ensuring compliance with -- are you aware</p> <p>24 that the ADT contract required written</p> <p>25 consent for the engagement of third-party</p>
<p style="text-align: right;">Page 11</p> <p>1 JOSEPH BAMIRA</p> <p>2 to help perform the ADT contract; is that</p> <p>3 correct?</p> <p>4 A. That's correct, because those</p> <p>5 people were supposed to have only people</p> <p>6 called in. They were subcontractors. We</p> <p>7 cannot control what they are saying. We</p> <p>8 cannot tell them how to do their job,</p> <p>9 except put parameters on what the call</p> <p>10 should be and what the quality of the</p> <p>11 call should be. But we did not listen to</p> <p>12 their calls.</p> <p>13 Q. You talked about the need to</p> <p>14 ensure that the numbers had been</p> <p>15 scrubbed. Were you making outbound</p> <p>16 calls?</p> <p>17 A. No, we were not, only inbound.</p> <p>18 But in this particular instance, even</p> <p>19 though someone allows you to call him,</p> <p>20 since we did not, you know, in the</p> <p>21 website it not necessarily always say</p> <p>22 ADT, it's a security company, or whatever</p> <p>23 it said. Even though a person said you</p> <p>24 can call me, and according to TCPA, on</p> <p>25 the national -- even if you put yourself,</p>	<p style="text-align: right;">Page 13</p> <p>1 JOSEPH BAMIRA</p> <p>2 vendors to assist in the performance of</p> <p>3 the ADT contract?</p> <p>4 A. I'm aware now. I don't</p> <p>5 remember when I got aware.</p> <p>6 Q. The compliance department,</p> <p>7 would it have been involved in ensuring</p> <p>8 compliance with adherence to that</p> <p>9 contractual provision?</p> <p>10 A. No. Because usually we did</p> <p>11 not -- the compliance department did not</p> <p>12 like read contracts and make sure that</p> <p>13 everybody is keeping their side of the</p> <p>14 contract. That did not happen.</p> <p>15 However, it was never raised</p> <p>16 by ADT, either, so it never became a</p> <p>17 complaint, because that's what everybody</p> <p>18 did. ADT pretty much knew very closely</p> <p>19 what we were doing. Nobody ever</p> <p>20 complained about it. So nobody asked us</p> <p>21 to do things differently than we actually</p> <p>22 have. So it never came to anybody's</p> <p>23 attention that it is an area that needs</p> <p>24 to be enforced literally.</p> <p>25 Q. And how do you know that ADT</p>

<p style="text-align: right;">Page 14</p> <p>1 JOSEPH BAMIRA</p> <p>2 knew that?</p> <p>3 A. Because ADT talked to Daphne</p> <p>4 all the time. They came to our office.</p> <p>5 They knew pretty much what we do. They</p> <p>6 knew we were working with other vendors.</p> <p>7 They never came and complained, hey, we</p> <p>8 saw you working with other vendors, we</p> <p>9 don't have any written, or any request to</p> <p>10 have a written permission, you cannot do</p> <p>11 that. There was never such a complaint,</p> <p>12 even though they knew and got quite a bit</p> <p>13 of traffic, and they knew how the traffic</p> <p>14 got to them.</p> <p>15 Q. When you say ADT, what</p> <p>16 individuals are you referring to? What</p> <p>17 individuals came to you and made those</p> <p>18 statements to you?</p> <p>19 A. For one, Dan Geiger. But</p> <p>20 there were, I suppose, other people, you</p> <p>21 know, that talked to Daphne. So I didn't</p> <p>22 speak to them. But there were other</p> <p>23 individuals, I suppose. Steve Dribben, I</p> <p>24 suppose. I don't know.</p> <p>25 Q. Do you have any knowledge of</p>	<p style="text-align: right;">Page 16</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. We forbade, in the contract we</p> <p>3 had with them, to make outbound</p> <p>4 unsolicited calls. It was a very</p> <p>5 specific type of calls and function that</p> <p>6 they were contracted to do. That was not</p> <p>7 one of them.</p> <p>8 Q. What did your compliance</p> <p>9 department do to ensure compliance with</p> <p>10 those contractual provisions?</p> <p>11 A. Again, it was more to the</p> <p>12 marketing department, because this was</p> <p>13 more legal instructions, not compliance.</p> <p>14 Because compliance, as you understand,</p> <p>15 was more make sure that all the agents</p> <p>16 and everybody else sticks to TCPA, so</p> <p>17 you're talking more about legal</p> <p>18 enforcement. That's not the compliance.</p> <p>19 Compliance is a big word.</p> <p>20 Q. Let's assume -- I will assume,</p> <p>21 and you will correct me if I am wrong,</p> <p>22 but I will assume for the purposes of our</p> <p>23 discussion that the compliance department</p> <p>24 had nothing to do with ensuring the</p> <p>25 enforcement of either of these</p>
<p style="text-align: right;">Page 15</p> <p>1 JOSEPH BAMIRA</p> <p>2 Steve Dribben ever speaking with Daphne</p> <p>3 Fernandes about this?</p> <p>4 A. Directly, not.</p> <p>5 Q. Did you ever speak to Steve</p> <p>6 Dribben about this?</p> <p>7 A. If he spoke to Daphne?</p> <p>8 Q. No. Did you ever speak to</p> <p>9 Steve Dribben about this?</p> <p>10 A. About this, you mean what?</p> <p>11 Q. About whether or not it would</p> <p>12 be appropriate to use a third-party</p> <p>13 vendor to help perform the ADT contract</p> <p>14 without ADT's written approval.</p> <p>15 A. No. I didn't see any need to,</p> <p>16 so I didn't ever discuss it with him.</p> <p>17 Q. Are you aware that the ADT</p> <p>18 contract also barred the making of</p> <p>19 unsolicited outbound telemarketing calls?</p> <p>20 A. I think I knew about it, but</p> <p>21 it was not initially. We were not doing</p> <p>22 these kinds of things.</p> <p>23 Q. Are you aware of whether your</p> <p>24 third-party vendors were making</p> <p>25 unsolicited outbound telemarketing calls?</p>	<p style="text-align: right;">Page 17</p> <p>1 JOSEPH BAMIRA</p> <p>2 contractual provisions or related</p> <p>3 provisions with your third-party vendors.</p> <p>4 Is that correct?</p> <p>5 A. The compliance department not.</p> <p>6 But personally I myself discussed it with</p> <p>7 Daphne, discussed it with other people,</p> <p>8 as some of the issues were. You know,</p> <p>9 very often we made a synopsis of what are</p> <p>10 the requirements, and then with all the --</p> <p>11 what is a contract. But there was not</p> <p>12 a compliance that says go every day and</p> <p>13 see that everybody is doing that. That</p> <p>14 was the job of Daphne. She was the</p> <p>15 head of the department. She had the</p> <p>16 exact instructions what she should do,</p> <p>17 what she shouldn't do. We changed it</p> <p>18 from time to time, reacted a lot of</p> <p>19 times to what came to our attention, to</p> <p>20 what we listened to, what complaints</p> <p>21 were. And that was her job, to make</p> <p>22 sure the implementation of it.</p> <p>23 Q. So what I hear you telling me</p> <p>24 is that with respect to the third-party</p> <p>25 vendor compliance with the restrictions</p>

<p style="text-align: right;">Page 18</p> <p>1 JOSEPH BAMIRA</p> <p>2 of what they could or couldn't do, the</p> <p>3 oversight of ensuring compliance with</p> <p>4 those provisions was the responsibility</p> <p>5 of Daphne Fernandes; is that correct?</p> <p>6 A. The provision of the</p> <p>7 agreements, yes.</p> <p>8 Q. And to whom did she report on</p> <p>9 that?</p> <p>10 A. She reported either to Benny</p> <p>11 Aboud or to me, because it depends what</p> <p>12 part of it. If it became a legal issue,</p> <p>13 or anything of that nature, I cannot say</p> <p>14 all the time because I don't know what</p> <p>15 she did all the time. But, you know, you</p> <p>16 work with people, you see how they</p> <p>17 approach things. She told me she</p> <p>18 checked. I asked her, you know these</p> <p>19 people, do they put in the provisions,</p> <p>20 and I lived by her answers. But I did</p> <p>21 not go to check it myself. That was her</p> <p>22 job.</p> <p>23 Q. So yesterday Reid Shapiro</p> <p>24 testified that Benny Aboud was not</p> <p>25 involved in these kind of compliance and</p>	<p style="text-align: right;">Page 20</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. In respect to performance of</p> <p>3 the ADT contract, and with respect to the</p> <p>4 third-party vendor engagements to perform</p> <p>5 the ADT contract.</p> <p>6 A. Again, only if it created, if</p> <p>7 there were legalities of the issues, if</p> <p>8 it was understanding with a vendor.</p> <p>9 Let's say he said you have to fill this</p> <p>10 form for me to know that's going on.</p> <p>11 That will not come to me. That was</p> <p>12 entirely her responsibility.</p> <p>13 If a vendor complained she</p> <p>14 didn't do anything, which never happened,</p> <p>15 by the way, then it would come to me.</p> <p>16 But if he made an arrangement, the vendor</p> <p>17 made an arrangement with Daphne, this is</p> <p>18 what we do, it was her responsibility to</p> <p>19 implement it.</p> <p>20 Yes, from time to time, there</p> <p>21 were complaints, so there was general</p> <p>22 supervision. But not on the day-to-day</p> <p>23 her work to make sure that everything</p> <p>24 works in accordance with what was agreed</p> <p>25 to.</p>
<p style="text-align: right;">Page 19</p> <p>1 JOSEPH BAMIRA</p> <p>2 enforcement issues. What you mentioned</p> <p>3 just now, are you aware of Benny's</p> <p>4 involvement in any of this?</p> <p>5 A. Again, in general he was not</p> <p>6 involved, but he could have been involved</p> <p>7 from time to time, if he was the CEO, and</p> <p>8 maybe people talked to him or asked him.</p> <p>9 And --</p> <p>10 Q. But that's just speculation?</p> <p>11 A. That's just speculation. I</p> <p>12 don't know that. But I know that people</p> <p>13 used to talk to him.</p> <p>14 Q. Are you aware of any instance</p> <p>15 when Benny was involved in a question</p> <p>16 relating to --</p> <p>17 A. As we speak right now, I</p> <p>18 cannot give any example.</p> <p>19 Q. So it sounds as if, to the</p> <p>20 extent that Daphne Fernandes had any</p> <p>21 supervision, it came from you. Is that</p> <p>22 correct? Is there anyone else that she</p> <p>23 would have as her supervisor?</p> <p>24 A. Again, supervision in respect</p> <p>25 to what?</p>	<p style="text-align: right;">Page 21</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Was there anyone else besides</p> <p>3 you to whom she reported with respect to</p> <p>4 the ADT contract?</p> <p>5 A. Again, with respect to the ADT</p> <p>6 contract, in what context?</p> <p>7 Q. In any context.</p> <p>8 A. I think in general she can</p> <p>9 report on how many calls she had, how</p> <p>10 many people she talked to. She would</p> <p>11 report to Benny, I suppose, because it's</p> <p>12 more on the marketing side. It has more</p> <p>13 to do with the vendor relationship. He</p> <p>14 would be the person to talk to, that is,</p> <p>15 vendor relationship. I was more if</p> <p>16 trouble arose, or other legal issues that</p> <p>17 should be paid attention to.</p> <p>18 Q. And with respect to any issues</p> <p>19 regarding compliance with the ADT</p> <p>20 contract, as opposed to compliance issues</p> <p>21 we were talking about earlier, compliance</p> <p>22 with the contract, those would all be</p> <p>23 legal issues and they would all come to</p> <p>24 you; is that correct?</p> <p>25 A. No. Because the compliance</p>



<p style="text-align: right;">Page 22</p> <p>1 JOSEPH BAMIRA</p> <p>2 with the ADT contract -- this is a big</p> <p>3 word. It would come to me if there were</p> <p>4 legal issues with the implementation. If</p> <p>5 nobody felt that there were legal issues</p> <p>6 with the implementation, it would not</p> <p>7 come to me.</p> <p>8 Q. What about with respect to the</p> <p>9 adherence to the paragraph of the</p> <p>10 contract that barred the use of</p> <p>11 third-party vendors without the written</p> <p>12 consent of ADT? Is that a legal issue</p> <p>13 that she would have reported to you on or</p> <p>14 is that something that she would have</p> <p>15 reported to someone else on?</p> <p>16 A. If she had an issue with that,</p> <p>17 and it became an issue between us and</p> <p>18 ADT, she would tell me. Apparently</p> <p>19 everything went smoothly. There was no</p> <p>20 need to alert me. There was no problem.</p> <p>21 Nobody raised an issue.</p> <p>22 We worked with vendors. ADT</p> <p>23 never raised a flag and said, hey, we</p> <p>24 have a problem here, because if they did</p> <p>25 they could have written a letter. They</p>	<p style="text-align: right;">Page 24</p> <p>1 JOSEPH BAMIRA</p> <p>2 the enforcement of contractual</p> <p>3 restrictions that Elephant Group placed</p> <p>4 upon third-party vendors with respect to</p> <p>5 outbound telemarketing calls; is that</p> <p>6 correct?</p> <p>7 A. Yes. Because she made sure</p> <p>8 that all the vendors that worked for us,</p> <p>9 they all signed -- basically in their</p> <p>10 contract was a copy in that respect of</p> <p>11 the contract with ADT. So they all</p> <p>12 signed that this is what they're going to</p> <p>13 do. It was, I think, word-by-word of</p> <p>14 what ADT requirements were.</p> <p>15 Q. That would be a legal issue.</p> <p>16 So would Daphne have reported -- would</p> <p>17 you have the ultimate responsibility in</p> <p>18 the company for making sure that Daphne</p> <p>19 was enforcing the compliance with these</p> <p>20 provisions? Is that your responsibility?</p> <p>21 A. Again, this is execution.</p> <p>22 Q. Correct.</p> <p>23 A. So if there was no problem</p> <p>24 with the execution, she would not come to</p> <p>25 me. She knew what has to be done, and</p>
<p style="text-align: right;">Page 23</p> <p>1 JOSEPH BAMIRA</p> <p>2 didn't write a letter, nothing. So there</p> <p>3 was nothing for her to discuss with me on</p> <p>4 this particular paragraph.</p> <p>5 Q. So from the period up to the</p> <p>6 filing of the lawsuit, did you ever have</p> <p>7 a conversation with Daphne Fernandes</p> <p>8 about this provision of the contract?</p> <p>9 A. No.</p> <p>10 Q. And if she had had an issue</p> <p>11 with it, she would have raised it with</p> <p>12 you?</p> <p>13 A. I would assume so. You have</p> <p>14 to ask her.</p> <p>15 Q. We already have. You are</p> <p>16 sitting here.</p> <p>17 A. I cannot tell you what she</p> <p>18 would do or not. I'm telling you, it</p> <p>19 would have been the right thing to do, to</p> <p>20 raise it with me, but apparently it never</p> <p>21 was an issue.</p> <p>22 Q. And with respect to the</p> <p>23 third-party vendors, your testimony to me</p> <p>24 is that, correct me if I'm wrong, is that</p> <p>25 it was Daphne's responsibility to ensure</p>	<p style="text-align: right;">Page 25</p> <p>1 JOSEPH BAMIRA</p> <p>2 she had her pretty much instructions, and</p> <p>3 I think she did it.</p> <p>4 Q. Were there any written</p> <p>5 guidelines for Daphne about what she was</p> <p>6 supposed to do to ensure the vendors'</p> <p>7 compliance with these contractual</p> <p>8 provisions?</p> <p>9 A. I don't know.</p> <p>10 Q. Was there any formal reporting</p> <p>11 structure that required her to report to</p> <p>12 you with respect to their compliance with</p> <p>13 these provisions?</p> <p>14 A. There was not a reporting</p> <p>15 structure, but she knew that she comes to</p> <p>16 me because I got involved if there was a</p> <p>17 problem, and if she got into a problem</p> <p>18 and it's a legal situation, she would</p> <p>19 come. She has her own -- you know, she</p> <p>20 is an intelligent woman. She didn't fail</p> <p>21 us. So if there was no issue, she knew,</p> <p>22 when there was a problem, she would come.</p> <p>23 Q. So you delegated pretty broad</p> <p>24 authority to Daphne to ensure compliance</p> <p>25 with these third-party vendor contracts;</p>

<p style="text-align: right;">Page 26</p> <p>1 JOSEPH BAMIRA</p> <p>2 is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. And what did --</p> <p>5 A. It's not even so much that I</p> <p>6 delegated. That was her job. So I</p> <p>7 didn't say, hey, you know, that is part</p> <p>8 of her job, to make sure that all the</p> <p>9 things, provisions and instructions, are</p> <p>10 being executed.</p> <p>11 Q. So unless a problem arose, you</p> <p>12 would not be checking on what Daphne was</p> <p>13 doing to ensure the compliance with these</p> <p>14 contracts; is that correct?</p> <p>15 A. That's true, yes.</p> <p>16 Q. So --</p> <p>17 A. Just let me correct.</p> <p>18 Q. Sure.</p> <p>19 A. I might have occasionally</p> <p>20 asked her are there any issues, any</p> <p>21 problems. But there was general</p> <p>22 conversation. It was not like a report</p> <p>23 on specific things.</p> <p>24 Q. Water cooler?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 JOSEPH BAMIRA</p> <p>2 No, sometimes complaints would</p> <p>3 come in. I would ask her, did you do</p> <p>4 this, did you do that. And complaints</p> <p>5 did come in. And people claimed all kind</p> <p>6 of we called, we didn't call correctly,</p> <p>7 or that we called them without them</p> <p>8 opting in. And so every time I checked,</p> <p>9 you know, she was responsible to bring</p> <p>10 the call, and the data on the opt-in, and</p> <p>11 does the vendor have the opt-in, a copy</p> <p>12 of the opt-in. And so since that</p> <p>13 happened, not very frequently, but it</p> <p>14 happened, I pretty much knew that she's</p> <p>15 doing the right thing, because she always</p> <p>16 supplied me with the right answers, and</p> <p>17 she showed me that actually the</p> <p>18 instructions were followed.</p> <p>19 Q. So how did Daphne ensure that</p> <p>20 the companies who were barred from making</p> <p>21 unsolicited outbound telemarketing calls,</p> <p>22 in fact, were not making unsolicited</p> <p>23 outbound telephone calls?</p> <p>24 A. I don't know how she was</p> <p>25 making sure, but I will tell you -- you</p>
<p style="text-align: right;">Page 27</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. So what did Daphne do to</p> <p>3 ensure the third-party vendors'</p> <p>4 compliance with this provision?</p> <p>5 A. Listen, I heard her testimony,</p> <p>6 so I can't quote her. I cannot recall</p> <p>7 her testimony. I don't know all the</p> <p>8 things she has done. But I understand</p> <p>9 that in this particular situation that</p> <p>10 she went to the vendor, she listened in</p> <p>11 to calls. She wanted to understand how</p> <p>12 they bring it in. She, from time to</p> <p>13 time, especially when people complained,</p> <p>14 she checked if they had on the websites</p> <p>15 the right wording, because she knew I</p> <p>16 would check with her, and so she knew</p> <p>17 she's responsible for it. So whatever</p> <p>18 she did she has done, but I don't know</p> <p>19 everything she has done.</p> <p>20 Q. And you have that knowledge</p> <p>21 because you were present at her</p> <p>22 deposition and heard her testimony?</p> <p>23 A. No, no, no. I didn't -- I</p> <p>24 only said that because it's what came to</p> <p>25 my mind right now.</p>	<p style="text-align: right;">Page 29</p> <p>1 JOSEPH BAMIRA</p> <p>2 know, if somebody wants to make outbound</p> <p>3 calls unbeknown to us, under the radar,</p> <p>4 unless somebody complains, took</p> <p>5 complaints, and says he got an</p> <p>6 unsolicited outbound call, it's no way to</p> <p>7 discover it. And I don't know what she's</p> <p>8 done exactly. It's very difficult. If</p> <p>9 people want to break the law, you cannot</p> <p>10 always know about it, because they don't</p> <p>11 do it for you to know that.</p> <p>12 Q. Isn't it true that, in fact,</p> <p>13 Daphne -- because I was sitting here also</p> <p>14 for Daphne's testimony. But wasn't it</p> <p>15 true that Daphne testified that, in fact,</p> <p>16 the third-party vendors that you used in</p> <p>17 turn used subvendors, and that she did</p> <p>18 not inquire into the subvendors'</p> <p>19 identities because that was the secret</p> <p>20 source, quote-unquote, that she felt was</p> <p>21 out of --</p> <p>22 A. I'm not sure that was her</p> <p>23 words, but --</p> <p>24 MR. SCHULTZ: Hold on. Let e</p> <p>25 just object to the form of the</p>



<p style="text-align: right;">Page 30</p> <p>1 JOSEPH BAMIRA</p> <p>2 question, please.</p> <p>3 I object to form of the</p> <p>4 question.</p> <p>5 Q. You can answer.</p> <p>6 A. I don't remember her exact</p> <p>7 words, so I cannot relate to exactly what</p> <p>8 she said. I think what she said is that</p> <p>9 they would not disclose the names, only</p> <p>10 because it's a commercial relationship,</p> <p>11 and people will not tell you how they</p> <p>12 always do what they do. They just</p> <p>13 contract that they do it correctly,</p> <p>14 because they are afraid you will go</p> <p>15 directly to them and circumvent them. So</p> <p>16 that's a way for them to keep their</p> <p>17 business. And even if you could ask,</p> <p>18 nobody will give you the list of the</p> <p>19 names.</p> <p>20 So I suppose that some of the</p> <p>21 things you have to rely on them that they</p> <p>22 fulfill the contract, and sometimes you</p> <p>23 just have to rely on that.</p> <p>24 Q. So you would rely on the</p> <p>25 third-party vendor to enforce the ban on</p>	<p style="text-align: right;">Page 32</p> <p>1 JOSEPH BAMIRA</p> <p>2 subcontractors, then you wouldn't know</p> <p>3 how the third-party vendor had filtered</p> <p>4 or vetted the subcontractors in the first</p> <p>5 place; correct?</p> <p>6 A. You have to ask that -- you</p> <p>7 know, she worked with that every day, so</p> <p>8 you have to ask Daphne. I don't know the</p> <p>9 answer to that, because that was her</p> <p>10 responsibility.</p> <p>11 Q. But just --</p> <p>12 A. I really don't know the answer</p> <p>13 to that.</p> <p>14 Q. It is really just a matter of</p> <p>15 logic, isn't it? If you don't know who</p> <p>16 the subcontractor is, you can't possibly</p> <p>17 know what the qualifications of the</p> <p>18 subcontractor were?</p> <p>19 A. Correct.</p> <p>20 MR. SCHULTZ: I object to the</p> <p>21 form of the question. It's been</p> <p>22 asked and answered. You can still</p> <p>23 answer. Or you can still try to.</p> <p>24 Q. Another groundrule. You can</p> <p>25 only not answer a question if it raises a</p>
<p style="text-align: right;">Page 31</p> <p>1 JOSEPH BAMIRA</p> <p>2 outbound telemarketing calls on their</p> <p>3 vendors; is that correct?</p> <p>4 A. I would say that, to the</p> <p>5 extent that they had, not all of them had</p> <p>6 subvendors, not all of them made calls.</p> <p>7 Again, it is basically they were hired</p> <p>8 for people who do opt-ins, in other</p> <p>9 words, give permission for people to</p> <p>10 call. It was never designed for people</p> <p>11 just to make blind calls, unsolicited</p> <p>12 calls.</p> <p>13 And, yes, it is that we had to</p> <p>14 rely on them because they would not give</p> <p>15 us the third-party names.</p> <p>16 But, you know, again, if there</p> <p>17 were issues, or frequent problems, people</p> <p>18 complained, if it was a little bit more</p> <p>19 than, you know, if it was really</p> <p>20 justified a complaint, we would fire</p> <p>21 them. So they knew that we would not</p> <p>22 keep them. To what extent does it always</p> <p>23 help? Probably not always helps.</p> <p>24 Q. So if you didn't know the</p> <p>25 identities of the third-party vendors'</p>	<p style="text-align: right;">Page 33</p> <p>1 JOSEPH BAMIRA</p> <p>2 question of privilege, and then your</p> <p>3 lawyer will tell you do not answer that</p> <p>4 question. Otherwise he can make whatever</p> <p>5 objections he wants to make. You still</p> <p>6 have to answer the question.</p> <p>7 A. No, I know. I pretty much</p> <p>8 know the rules. Please repeat the</p> <p>9 question.</p> <p>10 MR. McNEW: Could you read the</p> <p>11 question back, please.</p> <p>12 (The pending question was</p> <p>13 read.)</p> <p>14 MR. SCHULTZ: I noted an</p> <p>15 objection.</p> <p>16 A. I don't have an answer to</p> <p>17 that, because Daphne worked with them.</p> <p>18 So I don't know if she asked in general,</p> <p>19 and if she checked from time to time, or</p> <p>20 I don't know what she did for that.</p> <p>21 Q. Is it fair to say that you</p> <p>22 yourself had no involvement in ensuring</p> <p>23 that the subcontractors, your third-party</p> <p>24 vendor's contractors, abided by the terms</p> <p>25 of the ADT contract?</p>

<p style="text-align: right;">Page 34</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. I was not involved. But I</p> <p>3 will tell that -- and, again, you have to</p> <p>4 know, I don't know how many of them</p> <p>5 actually had subcontractors. I'm not</p> <p>6 even sure that Daphne would allow them to</p> <p>7 have subcontractors. And it assumes that</p> <p>8 all had subcontractors. I don't know if</p> <p>9 that's the case. So you have to ask her</p> <p>10 how she exactly assured that that would</p> <p>11 happen.</p> <p>12 Q. Do you know if Daphne barred</p> <p>13 your third-party vendors from using</p> <p>14 subcontractors?</p> <p>15 A. She might have, she might have</p> <p>16 not. I don't know. You have to ask her.</p> <p>17 Q. We are both in a deposition --</p> <p>18 A. I don't remember, so let's</p> <p>19 look at the deposition. I really don't</p> <p>20 remember. Frankly, I don't.</p> <p>21 Q. So let me refresh your</p> <p>22 recollection with what Ms. Fernandes</p> <p>23 testified at a deposition. This is at</p> <p>24 page 107 of her transcript, and I will</p> <p>25 just read it to you.</p>	<p style="text-align: right;">Page 36</p> <p>1 JOSEPH BAMIRA</p> <p>2 MR. SCHULTZ: I object to the</p> <p>3 form of the question to the extent</p> <p>4 it mischaracterizes the testimony.</p> <p>5 Q. You can answer.</p> <p>6 A. I really think that whatever</p> <p>7 refers to her testimony should be asked</p> <p>8 her. But if I may put an interpretation</p> <p>9 on what she's saying, I think she's</p> <p>10 talking about people who operate</p> <p>11 websites, not about people who make</p> <p>12 calls. And I don't think that we were</p> <p>13 permitted to have other people qualify</p> <p>14 and make calls.</p> <p>15 So this is what websites, who</p> <p>16 are the vendors with whom they worked to</p> <p>17 operate the websites, to bring in the</p> <p>18 opt-in calls.</p> <p>19 Q. What did Daphne Fernandes do</p> <p>20 to ensure that those subvendors adhered</p> <p>21 to the restrictions of the ADT contract,</p> <p>22 or the restrictions of your own contract</p> <p>23 with the vendor?</p> <p>24 A. Again, it's my understanding</p> <p>25 of what she's saying. What she's saying</p>
<p style="text-align: right;">Page 35</p> <p>1 JOSEPH BAMIRA</p> <p>2 "Question: But Paramount</p> <p>3 never disclosed to you from whom they</p> <p>4 obtained that lead? Is that correct?</p> <p>5 "Answer: Correct.</p> <p>6 "Question: And Saveology</p> <p>7 never required Paramount to disclose from</p> <p>8 whom it obtained a lead?</p> <p>9 "Answer: The name, no.</p> <p>10 Because of the secret source."</p> <p>11 Skipping ahead a few lines on</p> <p>12 page 108.</p> <p>13 "Question: As a matter of</p> <p>14 practice, did Saveology ask Paramount to</p> <p>15 disclose the names of its third-party</p> <p>16 lead vendors?</p> <p>17 "Answer: Again, it's their</p> <p>18 proprietary information.</p> <p>19 "Question: So, no?</p> <p>20 "Answer: No."</p> <p>21 So wouldn't you agree that</p> <p>22 Daphne Fernandes was aware that your</p> <p>23 third-party vendors were using</p> <p>24 subcontractors to perform the ADT</p> <p>25 contract?</p>	<p style="text-align: right;">Page 37</p> <p>1 JOSEPH BAMIRA</p> <p>2 is the operator of websites, the websites</p> <p>3 has only two requirements, in my</p> <p>4 opinion -- I don't know, maybe she had</p> <p>5 others. But to the extent that you</p> <p>6 operate a website, obviously it could be</p> <p>7 a website which adheres to all the</p> <p>8 regulations, such as I opt in, I agree to</p> <p>9 be called by a security-related company.</p> <p>10 And they would then give this list of</p> <p>11 people that agreed to our vendor. That</p> <p>12 is, the requirement was that the website</p> <p>13 should have these particular wordings.</p> <p>14 How she made sure or not sure,</p> <p>15 you have to ask her. But, again, they</p> <p>16 would not let her know who are the</p> <p>17 operators of the websites. But these are</p> <p>18 not people who made calls. It's very</p> <p>19 different.</p> <p>20 Q. First of all, you yourself had</p> <p>21 no involvement in ensuring -- the</p> <p>22 Elephant Group contract's bar on</p> <p>23 outgoing telemarketing calls by its</p> <p>24 third-party vendors, you weren't</p> <p>25 involved in the enforcement of those</p>

<p style="text-align: right;">Page 38</p> <p>1 JOSEPH BAMIRA</p> <p>2 contract provisions; correct?</p> <p>3 A. Again, we have not made</p> <p>4 outbound calls. This was prohibited</p> <p>5 across-the-board.</p> <p>6 Q. I am speaking about the</p> <p>7 contracts with your third-party vendors.</p> <p>8 A. The contracts were not</p> <p>9 allowed -- they were not allowed to make</p> <p>10 calls, outbound calls, period, not them</p> <p>11 and not their vendors.</p> <p>12 Q. And my question to you is,</p> <p>13 were you in any way involved in making</p> <p>14 sure that your vendors obeyed those</p> <p>15 provisions?</p> <p>16 A. I was involved to the extent</p> <p>17 that, you know, people do complain. They</p> <p>18 are not shy about complaining and suing</p> <p>19 if they can and make, in many cases, make</p> <p>20 a little bit of money. And whenever I</p> <p>21 asked for the website, for the opt-in,</p> <p>22 for the wording, I was supplied with</p> <p>23 that. So there was nothing there.</p> <p>24 Q. In the absence of a complaint,</p> <p>25 were you in any way involved in ensuring</p>	<p style="text-align: right;">Page 40</p> <p>1 JOSEPH BAMIRA</p> <p>2 subvendors?</p> <p>3 A. You have to ask her, again.</p> <p>4 But again let me just say one thing. I</p> <p>5 doubt that you put vendors and subvendors</p> <p>6 in the same categories. Vendors had one</p> <p>7 function. How they get the calls, how</p> <p>8 they get the opt-ins, this is what the</p> <p>9 operation was, opt-ins, it was not</p> <p>10 outbound calls. This was opt-ins. So to</p> <p>11 the extent that they knew that they have</p> <p>12 to have a website that has to contain</p> <p>13 this thing, I think that from time to</p> <p>14 time she checked. You have to ask her.</p> <p>15 If somebody strayed away from this, I</p> <p>16 don't think we knew about it or could</p> <p>17 have known about it.</p> <p>18 Q. I am not making distinctions</p> <p>19 because I am trying to understand a</p> <p>20 process I think doesn't turn on that</p> <p>21 distinction. I am trying to understand</p> <p>22 what, if anything, Elephant Group did to</p> <p>23 make sure that a vendor of its, like</p> <p>24 Paramount, take Paramount as an example,</p> <p>25 what Elephant Group did -- what your</p>
<p style="text-align: right;">Page 39</p> <p>1 JOSEPH BAMIRA</p> <p>2 the enforcement of these contractual</p> <p>3 provisions?</p> <p>4 A. No.</p> <p>5 Q. In the absence of a complaint,</p> <p>6 what did Daphne Fernandes do to ensure</p> <p>7 that the vendors were complying with this</p> <p>8 contractual provision?</p> <p>9 A. Again, you have to refer to</p> <p>10 her testimony. I will not try and tell</p> <p>11 you what Daphne did.</p> <p>12 Q. You are not aware of what</p> <p>13 Daphne did?</p> <p>14 A. Not in specifics, no. That</p> <p>15 was her job.</p> <p>16 Q. Anyone else in the company</p> <p>17 aware of what Daphne did?</p> <p>18 A. I doubt it. She was</p> <p>19 responsible for it.</p> <p>20 Q. And with respect to the</p> <p>21 enforcement of that provision with the</p> <p>22 vendors' vendors, the subcontractors, in</p> <p>23 the absence of a contract, did Daphne</p> <p>24 Fernandes do anything to ensure that the</p> <p>25 vendor was enforcing this on its</p>	<p style="text-align: right;">Page 41</p> <p>1 JOSEPH BAMIRA</p> <p>2 testimony to me is that when Elephant</p> <p>3 Group signs a contract with a company</p> <p>4 like Paramount, that it has a provision</p> <p>5 in that contract that says you cannot</p> <p>6 make outbound unsolicited telemarketing</p> <p>7 calls.</p> <p>8 A. Correct.</p> <p>9 Q. Paramount, in turn, goes out</p> <p>10 and hires a company, EMI. What did</p> <p>11 Elephant Group do -- in the absence of a</p> <p>12 complaint, what did Elephant Group do to</p> <p>13 ensure that its contractual restriction</p> <p>14 on Paramount was enforced in Paramount's</p> <p>15 relationship with EMI?</p> <p>16 A. They were not allowed to hire</p> <p>17 EMI. EMI is not a web operator. They</p> <p>18 were not allowed to hire EMI.</p> <p>19 Q. And so --</p> <p>20 A. So if to the extent they</p> <p>21 wanted to hire EMI, then they would have</p> <p>22 come and said we want to hire EMI, and we</p> <p>23 would have checked them out, and we would</p> <p>24 have probably, same as we do to Paramount</p> <p>25 we would have done to EMI. EMI was</p>

<p style="text-align: right;">Page 42</p> <p>1 JOSEPH BAMIRA</p> <p>2 against the understanding of the</p> <p>3 contract. They were not allowed to hire</p> <p>4 them. They were not supposed to hire</p> <p>5 them. It was not what we were doing, all</p> <p>6 that we did in order to get calls in.</p> <p>7 Because if we wanted to get EMI, we could</p> <p>8 have hired them directly. We don't need</p> <p>9 Paramount. We knew about EMI. We could</p> <p>10 have hired them. We did not. So why</p> <p>11 would we allow a subvendor to hire the</p> <p>12 same person, just closing our eyes. They</p> <p>13 were not allowed to.</p> <p>14 Q. And so what enforcement</p> <p>15 mechanisms, if any, what did you or</p> <p>16 Daphne do to make sure that a company</p> <p>17 like Paramount could not hire a company</p> <p>18 like EMI?</p> <p>19 A. You have a contractual</p> <p>20 agreement with a company. There's a</p> <p>21 little bit control that you can expect to</p> <p>22 exercise over an independent contractor.</p> <p>23 They have their offices. They are not</p> <p>24 geographically the same place. What they</p> <p>25 do in a back room, or unbeknown to us, or</p>	<p style="text-align: right;">Page 44</p> <p>1 JOSEPH BAMIRA</p> <p>2 a breach, the responsibility of the</p> <p>3 breach lands on the company, whoever saw</p> <p>4 the breach?</p> <p>5 A. A, you are asking me a legal</p> <p>6 question, so I --</p> <p>7 Q. You are the legal guy.</p> <p>8 A. Yeah, but I will give you --</p> <p>9 listen, I will not give you probably a</p> <p>10 legal opinion. I'm not allowed to. But</p> <p>11 I will tell you that indemnification</p> <p>12 usually is for the purposes that the</p> <p>13 company did something wrong, not people</p> <p>14 who are under -- are not under the</p> <p>15 company's control. And indemnification</p> <p>16 doesn't say that. So to the extent that</p> <p>17 indemnification provisions, they are for</p> <p>18 wrongdoing by the company.</p> <p>19 Now, yes, you can sometimes</p> <p>20 claim supervision, all kind of things,</p> <p>21 that is wrong with the company. But the</p> <p>22 indemnification is really to try and make</p> <p>23 sure that everybody is trying to do the</p> <p>24 right thing, and reasonable thing, which</p> <p>25 is under control, to fulfill the</p>
<p style="text-align: right;">Page 43</p> <p>1 JOSEPH BAMIRA</p> <p>2 undisclosed to us, is impossible to</p> <p>3 really ascertain. Unless you want to sit</p> <p>4 there 24/7, have a police type of</p> <p>5 operation, and make sure that every</p> <p>6 person in that company is really abiding</p> <p>7 by every particular law, and might as</p> <p>8 well be your company.</p> <p>9 So when you hire a vendor, in</p> <p>10 any business, then they have a certain</p> <p>11 amount of -- not discretion. They have</p> <p>12 to abide by the contract. If not, they</p> <p>13 are in breach of contract. You cannot</p> <p>14 sit there and look at the time all the</p> <p>15 time, because if that were the case ADT</p> <p>16 should have been sitting in our office</p> <p>17 24/7 and do the same thing.</p> <p>18 There is a certain amount of</p> <p>19 responsibility which goes with the</p> <p>20 contract, and unless it's shown that</p> <p>21 somebody breached a contract, it's very</p> <p>22 hard to discover it.</p> <p>23 Q. And isn't that the reason why</p> <p>24 companies put indemnification provisions</p> <p>25 in their contracts, so that when there is</p>	<p style="text-align: right;">Page 45</p> <p>1 JOSEPH BAMIRA</p> <p>2 contract. That's what indemnification</p> <p>3 is. We cannot always know what a</p> <p>4 subcontractor does, because he is not</p> <p>5 entirely 24/7 under our control. We can</p> <p>6 check from time to time, like Daphne did.</p> <p>7 She went to the offices. She listened to</p> <p>8 call. We checked, when we did get</p> <p>9 complaints, that things were done</p> <p>10 correctly.</p> <p>11 Q. Whose offices did she visit?</p> <p>12 A. I'm sorry?</p> <p>13 Q. You said she visited offices.</p> <p>14 Whose offices did she visit?</p> <p>15 A. She did.</p> <p>16 Q. Whose offices?</p> <p>17 A. Paramount's offices. She</p> <p>18 testified to that.</p> <p>19 Q. What were the names of the</p> <p>20 other third-party vendors that Elephant</p> <p>21 Group used, apart from Paramount?</p> <p>22 A. I don't remember all their</p> <p>23 names. One of them was Savelo. I don't</p> <p>24 remember the names exactly.</p> <p>25 Q. How many were there?</p>

<p style="text-align: right;">Page 46</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. I don't know. Not many. I</p> <p>3 think you were given the list. So that's</p> <p>4 a better source.</p> <p>5 Q. Actually, we weren't. We</p> <p>6 don't know the names. Do we have a list?</p> <p>7 MS. GOLDBERG: No.</p> <p>8 Q. If there is a list, can we</p> <p>9 have it?</p> <p>10 A. I don't know if there's a</p> <p>11 list. But you can find out who we worked</p> <p>12 with. You can ask Daphne who she worked</p> <p>13 with. I think she mentioned names. You</p> <p>14 asked her. She mentioned names.</p> <p>15 Q. She mentioned Visor. Does</p> <p>16 that sound right to you?</p> <p>17 A. What name?</p> <p>18 Q. Visor.</p> <p>19 A. No.</p> <p>20 Q. So apart from Daphne and you,</p> <p>21 would there be anybody else in the</p> <p>22 company that would be aware of affiliates</p> <p>23 being engaged to perform the ADT</p> <p>24 contract?</p> <p>25 A. Aware in what form? Just</p>	<p style="text-align: right;">Page 48</p> <p>1 JOSEPH BAMIRA</p> <p>2 she doesn't have a problem, when she</p> <p>3 needs to replace somebody, when she</p> <p>4 doesn't need to replace. She was not</p> <p>5 doing it on her own, full discretion,</p> <p>6 nobody knows what she's doing. That's</p> <p>7 not the case.</p> <p>8 Q. She wasn't smart enough to</p> <p>9 avoid this lawsuit, was she?</p> <p>10 MR. SCHULTZ: Objection. It</p> <p>11 was ADT that wasn't smart enough.</p> <p>12 A. That's an observation that you</p> <p>13 are entitled to make.</p> <p>14 Q. You said that if she had a</p> <p>15 problem with a vendor she would go to</p> <p>16 marketing. What type of problems with a</p> <p>17 vendor would lead her back to the</p> <p>18 marketing department? Who in the</p> <p>19 marketing department would she report to?</p> <p>20 A. You ask her. I think she</p> <p>21 talked to Reid Shapiro, who was overall</p> <p>22 in the marketing. But she might have</p> <p>23 talked to -- you know, there were</p> <p>24 different marketing people over time. So</p> <p>25 I suggest you ask her. I'm not sure.</p>
<p style="text-align: right;">Page 47</p> <p>1 JOSEPH BAMIRA</p> <p>2 information?</p> <p>3 Q. I am trying to understand how</p> <p>4 a company of your size could effectively</p> <p>5 put all of the responsibility for</p> <p>6 performing a contract of this size on the</p> <p>7 desk of Daphne Fernandes, with apparently</p> <p>8 no systemic oversight. And I am asking a</p> <p>9 bunch of questions to try and figure out</p> <p>10 the reporting structure, and you keep</p> <p>11 telling me, well, if there was a legal</p> <p>12 issue that arose, she would talk to you.</p> <p>13 But to no one else --</p> <p>14 A. Listen, on her relationship</p> <p>15 with vendors, there was the marketing</p> <p>16 people, there was Benny Aboud. She was</p> <p>17 not an island. And if she had issues</p> <p>18 with vendors, she would go from the</p> <p>19 marketing side, I have an issue with a</p> <p>20 vendor, I would like to fire him and get</p> <p>21 somebody else. That would not be coming</p> <p>22 to me. That would be probably going to</p> <p>23 the marketing department.</p> <p>24 But she would be smart enough</p> <p>25 to know when she has a problem and when</p>	<p style="text-align: right;">Page 49</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Reid testified yesterday that</p> <p>3 she did not report to him.</p> <p>4 A. She was not directly reporting</p> <p>5 to him.</p> <p>6 Q. Reid also testified that he</p> <p>7 didn't know who was in the marketing</p> <p>8 department. But your testimony is that</p> <p>9 Reid was the head of the marketing</p> <p>10 department?</p> <p>11 A. No, I did not say that.</p> <p>12 Q. I'm sorry. Please explain.</p> <p>13 A. I said he probably was aware.</p> <p>14 But the marketing department, people from</p> <p>15 time to time changed, and then</p> <p>16 ultimately, I think it was a bigger</p> <p>17 marketing issue, I'm just speculating,</p> <p>18 she would probably talk to Benny Aboud.</p> <p>19 I don't know. You would have to ask her.</p> <p>20 Q. So what kind of marketing</p> <p>21 issues would lead her to the marketing</p> <p>22 department on the ADT contract?</p> <p>23 A. You have to ask her.</p> <p>24 Q. So you are generally unaware</p> <p>25 of what Daphne Fernandes did in terms of</p>



<p style="text-align: right;">Page 50</p> <p>1 JOSEPH BAMIRA</p> <p>2 how she reported to the marketing</p> <p>3 department; is that correct?</p> <p>4 A. Not enough to testify here.</p> <p>5 You have to ask her.</p> <p>6 MR. McNEW: Can we take ten</p> <p>7 minutes.</p> <p>8 (A recess was taken.)</p> <p>9 BY MR. McNEW:</p> <p>10 Q. Let me backtrack and o what I</p> <p>11 normally do at the beginning of the</p> <p>12 deposition.</p> <p>13 Are you currently working at</p> <p>14 Elephant Group?</p> <p>15 A. No.</p> <p>16 Q. When did your employment</p> <p>17 terminate?</p> <p>18 A. April 6.</p> <p>19 Q. Are you working now?</p> <p>20 A. I'm trying to be an</p> <p>21 entrepreneur, with a few things here, but</p> <p>22 I'm not employed.</p> <p>23 Q. You are not on a salary with</p> <p>24 another company?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 52</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. The year 2000.</p> <p>3 Q. Did you create the Elephant</p> <p>4 Group?</p> <p>5 A. Elephant Group is evolved --</p> <p>6 it wasn't really created -- evolved from</p> <p>7 a different company, which really the</p> <p>8 first one was Benny. I was not around</p> <p>9 in, I think, '98 or something like that.</p> <p>10 But it evolved from a different company.</p> <p>11 Q. And did you join before or</p> <p>12 after Reid?</p> <p>13 A. After.</p> <p>14 Q. So first Benny created a</p> <p>15 company. Do you remember the name of</p> <p>16 that company?</p> <p>17 A. I'm not sure if it was Direct</p> <p>18 Communications, something like that,</p> <p>19 which was two or three, which was a</p> <p>20 subsidiary of a company where Benny</p> <p>21 worked, and he decided to create a</p> <p>22 division. I'm not sure. But eventually</p> <p>23 they created a separate company, which</p> <p>24 then was separated from the company which</p> <p>25 created them.</p>
<p style="text-align: right;">Page 51</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Do you have any contact now</p> <p>3 with Elephant Group?</p> <p>4 A. Yes, I do. I'm still on the</p> <p>5 board, and that's pretty much it.</p> <p>6 Q. Do you draw a salary for your</p> <p>7 board work?</p> <p>8 A. No. I think the company has</p> <p>9 no money so there's no salary, but at</p> <p>10 some point it will be, I suppose. I</p> <p>11 don't know how long I will stay on the</p> <p>12 board. But eventually I must guess that</p> <p>13 they will pay a salary, whatever they do.</p> <p>14 Q. Does either Benny or Reid sit</p> <p>15 on the board also?</p> <p>16 A. Benny does. Reid not.</p> <p>17 Q. Do you know if Benny has any</p> <p>18 continuing relationship with the company,</p> <p>19 apart from his service on the board?</p> <p>20 A. I think pro forma he has some</p> <p>21 consulting agreement. I don't think he</p> <p>22 has a relationship. You have to ask him.</p> <p>23 I'm not sure what he does.</p> <p>24 Q. When did you join Elephant</p> <p>25 Group?</p>	<p style="text-align: right;">Page 53</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. And so you joined the company</p> <p>3 in 2000?</p> <p>4 A. Correct.</p> <p>5 Q. And what positions did you</p> <p>6 hold in the company? Walk me through</p> <p>7 your tenure with the company.</p> <p>8 A. When I joined initially, I was</p> <p>9 a consultant. And then I became the CFO.</p> <p>10 And after that I became the chairman.</p> <p>11 Q. Do you have an equity interest</p> <p>12 in the company, or did you have an equity</p> <p>13 interest in the company?</p> <p>14 A. Yes.</p> <p>15 Q. When did you acquire that?</p> <p>16 A. In 2001, I think.</p> <p>17 Q. You said you initially joined</p> <p>18 as a consultant.</p> <p>19 A. Yes.</p> <p>20 Q. What was the substance of your</p> <p>21 consulting work?</p> <p>22 A. Help Benny develop the</p> <p>23 company, and see if they can raise money</p> <p>24 in the public arena.</p> <p>25 Q. And what was your experience</p>



<p style="text-align: right;">Page 54</p> <p>1 JOSEPH BAMIRA</p> <p>2 before coming to Elephant Group? Where</p> <p>3 did you work before Elephant Group?</p> <p>4 A. I worked for a broker-dealer</p> <p>5 by the name of Josephthal.</p> <p>6 Q. Can you spell the last name?</p> <p>7 A. T-h-a-l, Josephthal, t-h-a-l,</p> <p>8 Lyon &amp; Ross.</p> <p>9 Q. And what was your work at</p> <p>10 Josephthal?</p> <p>11 A. I was managing portfolios, but</p> <p>12 I was doing also investment banking.</p> <p>13 Q. So your background was more in</p> <p>14 finance?</p> <p>15 A. No. I had sufficient</p> <p>16 knowledge of finance to work in finance,</p> <p>17 but my background is really more in</p> <p>18 marketing and in management.</p> <p>19 Q. And so when you came to work</p> <p>20 at Elephant Group as a consultant, the</p> <p>21 subjects of your work were in enlarging</p> <p>22 the business and making it an attractive</p> <p>23 company for investors?</p> <p>24 A. Yes.</p> <p>25 Q. Did you have any background in</p>	<p style="text-align: right;">Page 56</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. How was the equity divided</p> <p>3 among the three of you?</p> <p>4 A. Benny had 76 percent. Reid</p> <p>5 and I each had 12.</p> <p>6 Q. What did you give the company</p> <p>7 in consideration for the equity share?</p> <p>8 A. Service.</p> <p>9 Q. You didn't make a capital</p> <p>10 contribution?</p> <p>11 A. No.</p> <p>12 Q. When did you become chairman</p> <p>13 of the company?</p> <p>14 A. I would say 2008. 2007 or '8.</p> <p>15 Q. Had there been a chairman</p> <p>16 before 2008?</p> <p>17 A. No.</p> <p>18 Q. So it was a new position that</p> <p>19 was created?</p> <p>20 A. I would believe so.</p> <p>21 Q. And what were your functions</p> <p>22 as chairman?</p> <p>23 A. Basically, to overall -- what</p> <p>24 chairmen of boards do, you know, get</p> <p>25 involved in things that they think it's</p>
<p style="text-align: right;">Page 55</p> <p>1 JOSEPH BAMIRA</p> <p>2 telemarketing or in Internet marketing?</p> <p>3 A. No.</p> <p>4 Q. Did Benny?</p> <p>5 A. You have to ask Benny. I'm</p> <p>6 not aware of it, but you have to ask him.</p> <p>7 Q. And how about Reid?</p> <p>8 A. Same answer.</p> <p>9 Q. So when you first came in 2000</p> <p>10 you were a consultant. When did you</p> <p>11 become the chief financial officer of the</p> <p>12 company?</p> <p>13 A. About 2001, or shortly after</p> <p>14 the end of 2001. Maybe early 2002. But</p> <p>15 don't hold me to it.</p> <p>16 Q. Was this about the time that</p> <p>17 you acquired an equity interest in the</p> <p>18 company?</p> <p>19 A. Yes.</p> <p>20 Q. And how was the equity</p> <p>21 divided? There were three equity owners;</p> <p>22 is that correct?</p> <p>23 A. Correct.</p> <p>24 Q. You, Reid and Benny?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 JOSEPH BAMIRA</p> <p>2 fit to get involved with, and have an</p> <p>3 overall say in the direction of the</p> <p>4 company.</p> <p>5 Q. So you say you were chairman</p> <p>6 of the board. You had a board of</p> <p>7 directors?</p> <p>8 A. Yes.</p> <p>9 Q. And who sat on the board in</p> <p>10 2008?</p> <p>11 A. A representative of Equistaff,</p> <p>12 Benny and myself and Reid.</p> <p>13 Q. And who is Equistaff?</p> <p>14 A. It's a public company which</p> <p>15 owns DISH Network.</p> <p>16 Q. When did Equistaff take a</p> <p>17 position in the company?</p> <p>18 A. Again, I believe end of 2007,</p> <p>19 but I'm not sure exactly. The second</p> <p>20 half of 2007, I believe.</p> <p>21 Q. Did the company have a board</p> <p>22 of directors before Equistaff acquired an</p> <p>23 equity interest in the company?</p> <p>24 A. No. It was just us three.</p> <p>25 Q. So the company created a board</p>

<p style="text-align: right;">Page 58</p> <p>1 JOSEPH BAMIRA</p> <p>2 of directors to create a structure for an</p> <p>3 outside investor to come in and put money</p> <p>4 into the company; is that correct?</p> <p>5 A. Specifically, for them to come</p> <p>6 in, yes.</p> <p>7 Q. And how large was the equity</p> <p>8 share that Equistaff took in the company?</p> <p>9 A. I think 22 percent.</p> <p>10 Q. And what was the capital</p> <p>11 contribution they made in exchange for</p> <p>12 the 22 percent stake?</p> <p>13 A. I think -- it was a little bit</p> <p>14 more complex. It was not a straight</p> <p>15 capital contribution.</p> <p>16 Q. Explain for me, please.</p> <p>17 A. I don't remember the details,</p> <p>18 really, so I don't want to testify to</p> <p>19 something that may not be accurate. But</p> <p>20 I would say in the magnitude of --</p> <p>21 because they paid us for different</p> <p>22 things, I would say around \$40 million,</p> <p>23 or \$37 million. But I don't remember the</p> <p>24 composition to tell you exactly what is</p> <p>25 equity contribution because they have had</p>	<p style="text-align: right;">Page 60</p> <p>1 JOSEPH BAMIRA</p> <p>2 part of the value.</p> <p>3 Q. So Equistaff took a position</p> <p>4 in Elephant Group because it wanted to</p> <p>5 feed leads to DISH Network through</p> <p>6 Elephant Group? Is that what you are</p> <p>7 saying?</p> <p>8 A. No, leads is not the right</p> <p>9 word. We were one of the marketing</p> <p>10 partners of Equistaff, and we sold for</p> <p>11 them. And, yes.</p> <p>12 Q. I apologize for using the</p> <p>13 wrong word. You have been doing this</p> <p>14 longer than I have.</p> <p>15 A. No, no. I'm just trying to be</p> <p>16 a little bit more accurate.</p> <p>17 Q. And I appreciate that.</p> <p>18 But the bottom line was that</p> <p>19 the company had particular value to</p> <p>20 Equistaff because of the synergy it would</p> <p>21 provide with DISH?</p> <p>22 A. Correct.</p> <p>23 Q. Whereas an arm's length</p> <p>24 investor, investing strictly on an EBITDA</p> <p>25 basis, might assign it a lower value?</p>
<p style="text-align: right;">Page 59</p> <p>1 JOSEPH BAMIRA</p> <p>2 some a claw, so we had to pay them back</p> <p>3 \$10 million. So it ended up probably at</p> <p>4 the end of the day to be about 28, 27. I</p> <p>5 don't remember exactly how it evolved.</p> <p>6 Q. So based on the size of their</p> <p>7 contribution and the size of the equity</p> <p>8 position they took, the company at that</p> <p>9 time was worth roughly \$200 million?</p> <p>10 A. That's a very good question.</p> <p>11 If just go straight valuation, you could</p> <p>12 probably make that calculation. But it</p> <p>13 was not the value of the company at the</p> <p>14 time, never was, because they paid us to</p> <p>15 ensure a flow of business, so to them it</p> <p>16 was worth whatever it was worth. But it</p> <p>17 had nothing to do specifically with the</p> <p>18 value of the company. The value of the</p> <p>19 company was really not somebody looking</p> <p>20 at EBITDA, multiples, and things of that</p> <p>21 nature. We had a particular value to</p> <p>22 them, which we would not have to any</p> <p>23 other third-party investor, because we</p> <p>24 really gave them a fairly substantial</p> <p>25 flow of business, so to them that was</p>	<p style="text-align: right;">Page 61</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. Yes.</p> <p>3 Q. Did you remain the CFO after</p> <p>4 you became chairman of the board?</p> <p>5 A. Yes. Actually, let me correct</p> <p>6 that.</p> <p>7 Q. Sure.</p> <p>8 A. No. Pretty much shortly after</p> <p>9 we finished I became chairman, and we</p> <p>10 took somebody else as the CFO.</p> <p>11 Q. Did you remain involved in the</p> <p>12 finances of the company, the financial</p> <p>13 reporting of the company?</p> <p>14 A. Not directly, no. I mean, for</p> <p>15 a while I assisted, and as time passed by</p> <p>16 my direct involvement was less.</p> <p>17 Obviously I saw reports, I had comments,</p> <p>18 what a board member or chairman would do.</p> <p>19 Q. Did you continue to be a</p> <p>20 marketing partner of DISH Network through</p> <p>21 2011?</p> <p>22 A. Yes.</p> <p>23 Q. And today?</p> <p>24 A. Yes.</p> <p>25 Q. And about how much of your,</p>

<p style="text-align: right;">Page 62</p> <p>1 JOSEPH BAMIRA</p> <p>2 whatever measure you want to use, NOI,</p> <p>3 reverse revenues, about how much of</p> <p>4 Elephant Group's revenues, pick a year,</p> <p>5 2010, would have been attributable to the</p> <p>6 DISH contract?</p> <p>7 A. I have to look it up. I don't</p> <p>8 remember.</p> <p>9 Q. Just rough. I'm not asking</p> <p>10 for a number. It's not a memory test.</p> <p>11 MR. SCHULTZ: You are asking</p> <p>12 him to speculate?</p> <p>13 MR. McNEW: No, I am not</p> <p>14 asking him to speculate. I am</p> <p>15 asking him to give me a rough idea</p> <p>16 of how much of the company's</p> <p>17 business was attributable to DISH.</p> <p>18 MR. SCHULTZ: If you can't do</p> <p>19 it, don't do it.</p> <p>20 A. I cannot do it. I really</p> <p>21 don't. Because it went through all kinds</p> <p>22 of --</p> <p>23 Q. More than half?</p> <p>24 A. No, no, not even close.</p> <p>25 Q. More than a quarter?</p>	<p style="text-align: right;">Page 64</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. It's hard for me to answer</p> <p>3 because I don't know your definition of</p> <p>4 "material." It definitely had an impact.</p> <p>5 Q. Are you familiar with GAAP?</p> <p>6 A. Yes.</p> <p>7 Q. Generally Applicable</p> <p>8 Accounting Principles?</p> <p>9 A. Yes.</p> <p>10 Q. You understand how materiality</p> <p>11 is used under GAAP?</p> <p>12 A. Again, I'm not an accountant,</p> <p>13 so I cannot tell you that I want to voice</p> <p>14 an opinion.</p> <p>15 Q. Can you tell me about what</p> <p>16 happened with the ADT account after the</p> <p>17 filing of the Desai lawsuit?</p> <p>18 A. What happened to the account?</p> <p>19 Okay.</p> <p>20 Initially, not much.</p> <p>21 Actually, it was supposed to go up,</p> <p>22 because ADT approached us to expand our</p> <p>23 operation with them. Actually, asked us</p> <p>24 to go through a due diligence on our</p> <p>25 operation, because they wanted to give us</p>
<p style="text-align: right;">Page 63</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. Not even a quarter.</p> <p>3 Q. So what about the ADT</p> <p>4 contract? In 2010, about -- again, I am</p> <p>5 not asking for a number. As a rough</p> <p>6 percentage, was it less than half of</p> <p>7 Elephant Group's business?</p> <p>8 A. Yes, quite a bit less.</p> <p>9 Q. Less than a quarter?</p> <p>10 A. I would say so.</p> <p>11 Q. Less than 10 percent?</p> <p>12 A. 10 percent is probably -- I</p> <p>13 don't know. I don't remember. You asked</p> <p>14 me, but I don't know. It was less than a</p> <p>15 quarter.</p> <p>16 Q. But it was an amount that had</p> <p>17 a material effect on the company's</p> <p>18 financial performance?</p> <p>19 A. Every relationship we had had</p> <p>20 an effect on the performance.</p> <p>21 Q. You are a finance guy and CFO,</p> <p>22 or at least former CFO, so I'm using</p> <p>23 material in an accounting sense. Did the</p> <p>24 ADT contract have a material effect on</p> <p>25 the balance sheet of the company?</p>	<p style="text-align: right;">Page 65</p> <p>1 JOSEPH BAMIRA</p> <p>2 part of their own call center's overflow,</p> <p>3 so they wanted to give us some of their</p> <p>4 calls to go through us, to answer it.</p> <p>5 We went through an extensive</p> <p>6 three, four, five months, because they</p> <p>7 couldn't find anybody who can pass that</p> <p>8 due diligence in the sense of a</p> <p>9 compliance point, and then hired an</p> <p>10 attorney from Ohio to come in and check</p> <p>11 us in the name of ADT. So that went on</p> <p>12 for four or five months. And then</p> <p>13 eventually it didn't go through, for a</p> <p>14 myriad of reasons.</p> <p>15 And after that, maybe half a</p> <p>16 year later, the business slowed down, but</p> <p>17 actually, because I am not sure of the</p> <p>18 exact reasons, but ADT sent also a legal</p> <p>19 team and asked us to vet all the</p> <p>20 different people we were working with,</p> <p>21 which they did, and pretty much okayed</p> <p>22 all the people who worked with us.</p> <p>23 And then when the actual</p> <p>24 litigation started, it started going</p> <p>25 south, obviously.</p>

<p style="text-align: right;">Page 66</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. So everything you were just</p> <p>3 describing was before the institution of</p> <p>4 the lawsuit?</p> <p>5 A. No, that is after. Everything</p> <p>6 I said is after the lawsuit. You said</p> <p>7 after the lawsuit.</p> <p>8 Q. I thought your last remark was</p> <p>9 after the litigation began everything</p> <p>10 started heading south.</p> <p>11 A. Correct. Because, you know,</p> <p>12 it took some time for this whole</p> <p>13 litigation to develop. And obviously we</p> <p>14 met, and over a few months we had</p> <p>15 mediation attempts, and things started to</p> <p>16 go south.</p> <p>17 Q. You mentioned mediation.</p> <p>18 Explain that a bit.</p> <p>19 A. Explain to you in what way?</p> <p>20 Q. You said there were mediation</p> <p>21 efforts. Can you describe what the</p> <p>22 mediation efforts were?</p> <p>23 A. Yes. ADT got the different</p> <p>24 vendors they sued into a room and said we</p> <p>25 would like everyone, we have to settle</p>	<p style="text-align: right;">Page 68</p> <p>1 JOSEPH BAMIRA</p> <p>2 calls. We could not trace any</p> <p>3 interaction with this particular</p> <p>4 complainant.</p> <p>5 But then, obviously, we wanted</p> <p>6 to maintain the relationship with them,</p> <p>7 and we were willing to work because</p> <p>8 obviously we had a commercial</p> <p>9 relationship, so we were willing to</p> <p>10 entertain doing our part.</p> <p>11 And so for the second, which</p> <p>12 didn't amount to much, too, and then</p> <p>13 there was third it attempt, the last two</p> <p>14 I attended, and that's what the mediation</p> <p>15 was.</p> <p>16 Q. Do you remember who the</p> <p>17 mediator was?</p> <p>18 A. The name of him?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. Does Eric Green sound</p> <p>22 familiar?</p> <p>23 A. It could be. I'm not good at</p> <p>24 retaining names, seriously.</p> <p>25 Q. When you say that ADT</p>
<p style="text-align: right;">Page 67</p> <p>1 JOSEPH BAMIRA</p> <p>2 this case, for reasons A, B, C and D, and</p> <p>3 we want each one of you to get that much</p> <p>4 money so we can settle the case. And we</p> <p>5 were about five or six. And initially I</p> <p>6 think everybody rejected that, all of the</p> <p>7 people they invited.</p> <p>8 And then subsequently there</p> <p>9 was a formal mediation up in Boston, I</p> <p>10 think three of them. The first one I</p> <p>11 didn't even go.</p> <p>12 Q. You did not go to the first</p> <p>13 one?</p> <p>14 A. No, I did not go to the first</p> <p>15 one.</p> <p>16 Q. Why did you not attend the</p> <p>17 first one?</p> <p>18 A. We sent legal representation.</p> <p>19 I didn't want to go because I didn't</p> <p>20 think we had anything to do with it. So</p> <p>21 I didn't want to appear in mediation,</p> <p>22 which could imply that we had any --</p> <p>23 because nobody showed us any evidence</p> <p>24 that the calls even came to us, this</p> <p>25 particular Desai. We never had the</p>	<p style="text-align: right;">Page 69</p> <p>1 JOSEPH BAMIRA</p> <p>2 addressed the group and asked for</p> <p>3 contributions, was there an individual</p> <p>4 who you recall who made that demand from</p> <p>5 ADT?</p> <p>6 A. First was a group meeting with</p> <p>7 the attorneys for ADT. And then we were</p> <p>8 taken, each one of us, to a side room.</p> <p>9 I'm not sure if Hannah was present or</p> <p>10 not. I can't recall exactly who was</p> <p>11 present in the group.</p> <p>12 Q. By Hannah, you mean Hannah</p> <p>13 Lim?</p> <p>14 A. Hannah Lim, sorry.</p> <p>15 Q. And you say in the first of</p> <p>16 the three mediations you attended by</p> <p>17 sending counsel; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. And who was the counsel that</p> <p>20 you sent to the first mediation?</p> <p>21 A. My good friend to the left.</p> <p>22 Q. That would be Jim Schultz?</p> <p>23 A. Yes.</p> <p>24 Q. When ADT said it had to settle</p> <p>25 this lawsuit, did you in any way object</p>

<p style="text-align: right;">Page 70</p> <p>1 JOSEPH BAMIRA</p> <p>2 with that assessment?</p> <p>3 A. Yes, because -- let me put it</p> <p>4 this way: They gave three different</p> <p>5 reasons. At least two I remember. One</p> <p>6 of them, they believed that the judge who</p> <p>7 was hearing the case is a pro-plaintiff</p> <p>8 judge, or consumer judge, and so they</p> <p>9 were concerned with that.</p> <p>10 They were concerned that it</p> <p>11 was a very big number of calls made over</p> <p>12 the years, and so that the exposure to</p> <p>13 them is about, I don't know, two or three</p> <p>14 billion dollars, I'm not sure exactly</p> <p>15 what number it was. They were concerned</p> <p>16 that that overhangs their balance sheet.</p> <p>17 They did not want that to overhang their</p> <p>18 balance sheet.</p> <p>19 Q. That would be a material risk.</p> <p>20 A. I agree with you, that's a</p> <p>21 material risk, especially since I think</p> <p>22 they were planning on separating from</p> <p>23 Tyco at the time. And so it was</p> <p>24 important to them t settle. They</p> <p>25 believed that the value of the settlement</p>	<p style="text-align: right;">Page 72</p> <p>1 JOSEPH BAMIRA</p> <p>2 will be certified, I don't think they had</p> <p>3 a great chance of being certified, but</p> <p>4 even if the chance was small, given the</p> <p>5 number that they faced, the</p> <p>6 probabilities, probably from their</p> <p>7 perspective, it was probably on good</p> <p>8 decision.</p> <p>9 Q. In fact, a \$15 million</p> <p>10 settlement of a \$2 billion risk is a</p> <p>11 pretty good deal, would you say?</p> <p>12 MR. SCHULTZ: Objection.</p> <p>13 A. I don't know. Yeah, if you</p> <p>14 have to choose between losing 15 and</p> <p>15 risking 2 billion, if that's the case,</p> <p>16 the mathematics is probably fair.</p> <p>17 Q. So it is your testimony that,</p> <p>18 from ADT's perspective, you think the</p> <p>19 settlement was a reasonable settlement?</p> <p>20 MR. SCHULTZ: I object to the</p> <p>21 form.</p> <p>22 MR. McNEW: I am just</p> <p>23 repeating what he said.</p> <p>24 A. Listen, I understood in what</p> <p>25 shoes they were standing.</p>
<p style="text-align: right;">Page 71</p> <p>1 JOSEPH BAMIRA</p> <p>2 was about \$15 million, and they believed</p> <p>3 that, given the exposure, and given the</p> <p>4 relationship, and that we are the</p> <p>5 major -- because at the end of the day I</p> <p>6 think they sued, I think, 13, or 12 or</p> <p>7 13, but there was only four left standing</p> <p>8 because everybody else I think pretty</p> <p>9 much went bankrupt. So, based on the</p> <p>10 exposure, but also the fact that we do</p> <p>11 business, it's probably a better business</p> <p>12 decision to settle it.</p> <p>13 Q. Do you disagree with that?</p> <p>14 A. Not from their perspective. I</p> <p>15 understand where they came from. And I</p> <p>16 did understand that a relationship has</p> <p>17 some value. But I did not agree to</p> <p>18 contribute. Obviously, we didn't agree</p> <p>19 initially.</p> <p>20 On a legal base, if ADT as a</p> <p>21 defendant would have a good chance, I</p> <p>22 think, given the TCPA background of that,</p> <p>23 it think they had a pretty good chance.</p> <p>24 But, you know, even if the chances are</p> <p>25 small, which I pointed out, and that they</p>	<p style="text-align: right;">Page 73</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Why did you say ADT had a good</p> <p>3 defense in the case? You said that ADT</p> <p>4 probably could have --</p> <p>5 A. Listen, I don't remember all</p> <p>6 the details. But at the time I looked at</p> <p>7 it, you know, and I think a few of us in</p> <p>8 the meeting raised why don't we fight it,</p> <p>9 you know. And I don't remember all the</p> <p>10 different reasons, so I don't want to</p> <p>11 repeat it. I didn't look at the case in</p> <p>12 a long time. But that was my impression</p> <p>13 at the time.</p> <p>14 Q. Did you voice an objection in</p> <p>15 any of the mediations to the \$15 million</p> <p>16 settlement?</p> <p>17 A. I was not asked about it. I</p> <p>18 was not asked to contribute my opinion on</p> <p>19 any of the negotiations with the</p> <p>20 plaintiff.</p> <p>21 Q. Why do you suppose you were</p> <p>22 asked to attend the mediations?</p> <p>23 MR. SCHULTZ: Objection to</p> <p>24 form.</p> <p>25 A. So we would make our</p>



<p style="text-align: right;">Page 74</p> <p>1 JOSEPH BAMIRA</p> <p>2 contribution to ADT. I never met even</p> <p>3 the other side. I don't even know how</p> <p>4 they look.</p> <p>5 Q. They are pretty scary-looking.</p> <p>6 A. I can see, because they sued</p> <p>7 ADT again. So, professional, whatever.</p> <p>8 I agree they are not nice people.</p> <p>9 Q. My memory fails me. That's</p> <p>10 why I was asking my colleague. She is</p> <p>11 failing me, too. So I have to ask you</p> <p>12 again. In any of the mediations, and I</p> <p>13 think I know what your answer was, and I</p> <p>14 apologize, and he will say asked and</p> <p>15 answered.</p> <p>16 A. Whatever you want, I'll</p> <p>17 repeat.</p> <p>18 MR. SCHULTZ: I object to</p> <p>19 form.</p> <p>20 Q. He even made the objection</p> <p>21 before I asked the question.</p> <p>22 So you did not voice an</p> <p>23 objection to the \$15 million settlement;</p> <p>24 is that correct?</p> <p>25 A. I was not asked.</p>	<p style="text-align: right;">Page 76</p> <p>1 JOSEPH BAMIRA</p> <p>2 objection to the settlement?</p> <p>3 A. That's a lawyer privilege.</p> <p>4 MR. SCHULTZ: My objection is,</p> <p>5 to the extent that that calls for</p> <p>6 attorney-client it's lawyer</p> <p>7 privilege and he shouldn't answer</p> <p>8 that question.</p> <p>9 MR. McNEW: I think I can ask</p> <p>10 the fact.</p> <p>11 MR. SCHULTZ: You can ask all</p> <p>12 you want, but he is not going to</p> <p>13 answer it.</p> <p>14 Q. So Elephant Group -- so is it</p> <p>15 fair to say Elephant Group did not raise</p> <p>16 objection to the settlement at the</p> <p>17 settlement hearing in the court?</p> <p>18 MR. SCHULTZ: I object to the</p> <p>19 form of the question.</p> <p>20 A. Elephant, as far as I'm</p> <p>21 concerned, didn't know that there is such</p> <p>22 a hearing. We were not even asked. So</p> <p>23 obviously we cannot voice an opposition</p> <p>24 to something we didn't know takes place</p> <p>25 or we were not asked. It is just</p>
<p style="text-align: right;">Page 75</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. And so I assume from that --</p> <p>3 A. I didn't even know that it</p> <p>4 would end up with 15. That was not</p> <p>5 during the mediation.</p> <p>6 Q. So is it a fair assumption</p> <p>7 from your answer that because you weren't</p> <p>8 asked to object you didn't make an</p> <p>9 objection?</p> <p>10 A. Correct.</p> <p>11 Q. I am jumping around a little</p> <p>12 bit. Sorry about that.</p> <p>13 A. Just so you understand, the</p> <p>14 context of the mediation between us and</p> <p>15 ADT was different than between them and</p> <p>16 the plaintiff. Our context was</p> <p>17 third-party notice and indemnification.</p> <p>18 Theirs was a TCPA case.</p> <p>19 Q. There was a hearing in the</p> <p>20 court to determine whether the \$15</p> <p>21 million settlement was an appropriate</p> <p>22 settlement. Are you aware of that?</p> <p>23 A. No.</p> <p>24 Q. Did your lawyers ever ask you</p> <p>25 whether you wanted to present an</p>	<p style="text-align: right;">Page 77</p> <p>1 JOSEPH BAMIRA</p> <p>2 technically impossible.</p> <p>3 Q. Okay. That's a good answer.</p> <p>4 Outside of the mediations, did</p> <p>5 Elephant Group ever voice an objection to</p> <p>6 the settlement?</p> <p>7 A. We were not asked, and we did</p> <p>8 not discuss it. It was never raised with</p> <p>9 us. It was never a subject of a</p> <p>10 discussion.</p> <p>11 Q. You were represented by</p> <p>12 counsel in the case.</p> <p>13 A. And we didn't even know it was</p> <p>14 \$15 million.</p> <p>15 Q. You were represented by</p> <p>16 counsel in the case, were you not?</p> <p>17 A. Yes.</p> <p>18 Q. Were you aware whether your</p> <p>19 counsel ever voiced an objection to the</p> <p>20 settlement?</p> <p>21 A. You have to ask him.</p> <p>22 Q. I am asking you if you are</p> <p>23 aware.</p> <p>24 A. No, I'm not aware that he</p> <p>25 raised or not. I'm not aware.</p>



<p style="text-align: right;">Page 78</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. I want to go back to something</p> <p>3 else we were talking about earlier. I</p> <p>4 think it was your testimony that your</p> <p>5 vendors did not make unsolicited outbound</p> <p>6 telemarketing calls. Is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And it is your testimony --</p> <p>9 A. They were not allowed to. I</p> <p>10 didn't say they didn't. I said they were</p> <p>11 not allowed to.</p> <p>12 Q. And I think it was also your</p> <p>13 testimony that Elephant Group didn't make</p> <p>14 outbound telephone calls. Is that</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. And your vendor contracts did</p> <p>18 not permit your vendors to make outbound</p> <p>19 telemarketing calls; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. You said, I believe, correct</p> <p>22 me if I'm mistaken, I believe it was your</p> <p>23 testimony that Dan Geiger was aware of</p> <p>24 Elephant Group's use of third-party</p> <p>25 vendors to perform the ADT contract. Is</p>	<p style="text-align: right;">Page 80</p> <p>1 JOSEPH BAMIRA</p> <p>2 MR. SCHULTZ: Let him finish.</p> <p>3 Q. So if you want to clarify that</p> <p>4 for me, that would be helpful.</p> <p>5 A. I cannot tell you what is he</p> <p>6 aware or not aware. But I know he was</p> <p>7 aware that we were using vendors,</p> <p>8 regardless -- that's what my testimony</p> <p>9 was -- regardless whether it was asked in</p> <p>10 writing or it was not asked in writing.</p> <p>11 He understood the operation. He knew</p> <p>12 what the operation is. In the depth, you</p> <p>13 have to ask him.</p> <p>14 I don't know about outbound</p> <p>15 calls. I don't know if he knows about</p> <p>16 it. That I don't know, in that detail.</p> <p>17 But he is aware that we used vendors.</p> <p>18 That he was definitely aware of.</p> <p>19 Q. But you have no knowledge that</p> <p>20 he was aware of your vendors making</p> <p>21 outbound calls?</p> <p>22 MR. SCHULTZ: Objection,</p> <p>23 again, to the form of the question.</p> <p>24 A. Let me repeat, I didn't know,</p> <p>25 and I don't know if it existed. So I</p>
<p style="text-align: right;">Page 79</p> <p>1 JOSEPH BAMIRA</p> <p>2 that correct?</p> <p>3 A. Yes.</p> <p>4 Q. Is it your testimony that Dan</p> <p>5 Geiger was aware that third-party vendors</p> <p>6 were making outbound telemarketing calls?</p> <p>7 A. You have to ask him. I doubt</p> <p>8 it, because I don't think that was part</p> <p>9 of what we were doing, and so I don't</p> <p>10 know. But you have to ask him.</p> <p>11 Q. But you have no knowledge of</p> <p>12 Dan Geiger's awareness that your vendors</p> <p>13 were making outbound telemarketing calls?</p> <p>14 A. I cannot tell you specifically</p> <p>15 if it is not outbound, because I don't</p> <p>16 have knowledge if it's outbound, so I</p> <p>17 don't know if he had.</p> <p>18 MR. SCHULTZ: I just want to</p> <p>19 note an objection to the form of</p> <p>20 the last question, assuming facts</p> <p>21 not in evidence.</p> <p>22 Q. I am just asking, trying to</p> <p>23 clarify your earlier remark that Dan</p> <p>24 Geiger was aware of all of this. So I</p> <p>25 wanted to make what all of this means.</p>	<p style="text-align: right;">Page 81</p> <p>1 JOSEPH BAMIRA</p> <p>2 cannot tell you that he knows about it</p> <p>3 because I don't know if it existed. I</p> <p>4 don't know if anybody told him, because</p> <p>5 maybe nobody else knew. So I have no</p> <p>6 such knowledge to tell you that he knew</p> <p>7 about it, because I don't know.</p> <p>8 Q. Perfect.</p> <p>9 So let's talk a bit about your</p> <p>10 third-party vendors. Yesterday when I</p> <p>11 was talking to Reid we got kind of hung</p> <p>12 up on this conversation because sometimes</p> <p>13 I would use affiliates and sometimes I</p> <p>14 would use third-party vendors, and he</p> <p>15 would tell me that they were different.</p> <p>16 In your mind, what is an affiliate? How</p> <p>17 does it differ from a third-party vendor,</p> <p>18 with respect to the ADT contract?</p> <p>19 A. We did not have affiliates, in</p> <p>20 this term. This is just now we used the</p> <p>21 terminology. Third-party vendors are the</p> <p>22 people who operated the websites.</p> <p>23 Q. Would Paramount be a</p> <p>24 third-party vendor?</p> <p>25 A. I'm not sure how they used the</p>

<p style="text-align: right;">Page 82</p> <p>1 JOSEPH BAMIRA</p> <p>2 terminology. You know, however they</p> <p>3 used -- listen, Reid knows probably</p> <p>4 better than me, because it's marketing</p> <p>5 terminology. This is not a legal</p> <p>6 terminology in that context. It is in</p> <p>7 the indemnification context, not in that</p> <p>8 context.</p> <p>9 Q. I don't really care what word</p> <p>10 we use. I just want to make sure we</p> <p>11 understand each other as we talk.</p> <p>12 A. So ask me substance, because</p> <p>13 I'm not sure myself what the difference</p> <p>14 is, what Reid referred to, because I wish</p> <p>15 you would have found out from him.</p> <p>16 Q. Unfortunately, he says you are</p> <p>17 the guy that knows all this stuff.</p> <p>18 A. I understand, and it's very</p> <p>19 good that he thought, but I don't.</p> <p>20 Q. So, look, I believe Paramount</p> <p>21 signed something called an affiliate</p> <p>22 agreement with you. Does that sound</p> <p>23 right to you?</p> <p>24 A. It could be. I'm not sure. I</p> <p>25 have to see the agreement, if it says.</p>	<p style="text-align: right;">Page 84</p> <p>1 JOSEPH BAMIRA</p> <p>2 number, it's probably true. I think more</p> <p>3 like five or six, maybe even five. I</p> <p>4 doubt it's more. She probably has better</p> <p>5 information.</p> <p>6 Q. And two of those would have</p> <p>7 been Paramount and Savelo; is that</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Who at Elephant Group was</p> <p>11 responsible for engaging Paramount to be</p> <p>12 a third-party vendor on the ADT contract?</p> <p>13 A. It's the marketing department.</p> <p>14 I don't know how they -- you have to ask</p> <p>15 the marketing department, and probably</p> <p>16 Daphne. People probably called us, heard</p> <p>17 about it. I'm not sure.</p> <p>18 Q. Do you know anything about</p> <p>19 Paramount?</p> <p>20 A. No.</p> <p>21 Q. Do you know anything about how</p> <p>22 long they were in business before they</p> <p>23 came to be engaged by Elephant Group?</p> <p>24 A. No.</p> <p>25 Q. Who did the marketing</p>
<p style="text-align: right;">Page 83</p> <p>1 JOSEPH BAMIRA</p> <p>2 It probably says affiliate, but I'm not</p> <p>3 sure.</p> <p>4 Q. Does that term, affiliate,</p> <p>5 have any particular meaning to you?</p> <p>6 A. No. It is people who we do</p> <p>7 business with who give us a marketing</p> <p>8 channel that we hire people. Instead of</p> <p>9 us doing it directly, then we hire a</p> <p>10 third party to do it for us, as an</p> <p>11 affiliate. Whatever function.</p> <p>12 Q. So when you are performing the</p> <p>13 ADT contract and you hire companies like</p> <p>14 Paramount -- should we call them, for the</p> <p>15 purposes of this discussion, call them</p> <p>16 third- party vendors? Does that make it</p> <p>17 easier?</p> <p>18 A. Yes, fine.</p> <p>19 Q. I believe it was Daphne's</p> <p>20 testimony that there were between five</p> <p>21 and ten third-party vendors that were</p> <p>22 engaged by Elephant Group to help perform</p> <p>23 the ADT contract. Does that sound right</p> <p>24 to you?</p> <p>25 A. If she says, if she put a</p>	<p style="text-align: right;">Page 85</p> <p>1 JOSEPH BAMIRA</p> <p>2 department report to on the engagement of</p> <p>3 third-party vendors?</p> <p>4 A. Can you repeat the question,</p> <p>5 please?</p> <p>6 Q. Sure.</p> <p>7 MR. McNEW: Could you read</p> <p>8 that back, please.</p> <p>9 (The pending question was</p> <p>10 read.)</p> <p>11 Q. I will rephrase the question.</p> <p>12 Who was the individual who made the</p> <p>13 decision to engage Paramount?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Was it you?</p> <p>16 A. No.</p> <p>17 Q. I believe Reid said yesterday</p> <p>18 it wasn't him. Does that mean it was</p> <p>19 Benny, Benny Aboud?</p> <p>20 A. It could have been Benny. It</p> <p>21 could have been the head of the marketing</p> <p>22 department at the time. I don't know.</p> <p>23 Q. Who was the head of the</p> <p>24 marketing department?</p> <p>25 A. I don't know. I really don't</p>

<p style="text-align: right;">Page 86</p> <p>1 JOSEPH BAMIRA</p> <p>2 know.</p> <p>3 Q. How many hours a week did you</p> <p>4 spend in the Elephant Group offices?</p> <p>5 MR. SCHULTZ: At what time?</p> <p>6 Q. In 2008. I believe they were</p> <p>7 engaged in 2008. Is that correct, the</p> <p>8 Paramount contract in 2008?</p> <p>9 A. No, I don't know that.</p> <p>10 Q. I'm sorry, 2010.</p> <p>11 In 2010-2011, about how many</p> <p>12 hours a week did you spend in the</p> <p>13 Elephant Group offices?</p> <p>14 A. 35, 40.</p> <p>15 Q. And to whom did the marketing</p> <p>16 department report?</p> <p>17 A. The marketing department</p> <p>18 reported to Benny.</p> <p>19 Q. So your testimony is that the</p> <p>20 engagement of Paramount would have been</p> <p>21 done through the marketing department</p> <p>22 under the supervision of Benny Aboud; is</p> <p>23 that correct?</p> <p>24 A. No, I said I don't know.</p> <p>25 That's what I said.</p>	<p style="text-align: right;">Page 88</p> <p>1 JOSEPH BAMIRA</p> <p>2 terms of due diligence before hiring the</p> <p>3 other third-party vendors to perform the</p> <p>4 ADT contract?</p> <p>5 A. It wasn't my job, not even</p> <p>6 with Paramount, to have a check with due</p> <p>7 diligence. I'm sure they did due</p> <p>8 diligence, but I have no knowledge. I</p> <p>9 was not involved in that.</p> <p>10 Q. That would have been Daphne</p> <p>11 Fernandes?</p> <p>12 A. Again, I said I don't know.</p> <p>13 Q. I am only asking because you</p> <p>14 said I have to ask Daphne, so I</p> <p>15 figured --</p> <p>16 A. No, I said I don't really</p> <p>17 know. I know it was done. I don't know</p> <p>18 who has done it. So you ask me is it</p> <p>19 likely it is Daphne.</p> <p>20 Q. How do you know it was done?</p> <p>21 A. Because I was told by Daphne</p> <p>22 that they looked into these people, they</p> <p>23 talked to them, and I believe that they</p> <p>24 understand that they don't want to work</p> <p>25 just with any Tom, Dick and Harry. These</p>
<p style="text-align: right;">Page 87</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Are you aware of the</p> <p>3 engagement of the other five to ten</p> <p>4 third-party vendors that Daphne Fernandes</p> <p>5 spoke of? Do you know who engaged any of</p> <p>6 those other companies?</p> <p>7 A. No.</p> <p>8 Q. Is it likely that Daphne</p> <p>9 Fernandes made the decision to hire those</p> <p>10 companies?</p> <p>11 A. You have to ask her. I said I</p> <p>12 don't know.</p> <p>13 Q. I believe her testimony was</p> <p>14 that, in fact, she did.</p> <p>15 A. She did or she didn't?</p> <p>16 Q. Did.</p> <p>17 Are you aware of any due</p> <p>18 diligence that Elephant Group did with</p> <p>19 respect to the hiring of Paramount Group</p> <p>20 before hiring them?</p> <p>21 A. You have to ask Daphne.</p> <p>22 Q. You have no knowledge?</p> <p>23 A. No.</p> <p>24 Q. And do you have any knowledge</p> <p>25 with respect to what the company did in</p>	<p style="text-align: right;">Page 89</p> <p>1 JOSEPH BAMIRA</p> <p>2 are reasonable people. They are not</p> <p>3 small, little workers in the company. So</p> <p>4 they had responsibility.</p> <p>5 Q. When you say that Daphne said</p> <p>6 they had looked at them, who is "they"?</p> <p>7 A. I don't know. It might have</p> <p>8 been her. It might have been somebody</p> <p>9 else. I seriously don't know. I was not</p> <p>10 involved with that.</p> <p>11 Q. So when you say that you know</p> <p>12 that because Daphne told you, Daphne</p> <p>13 wasn't reporting to you in the course of</p> <p>14 her work, because it wasn't something</p> <p>15 that you were responsible for; is that</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Were you aware of any written</p> <p>19 procedures the company maintained with</p> <p>20 respect to the engagement of third-party</p> <p>21 vendors to perform contracts like the ADT</p> <p>22 contract?</p> <p>23 A. I think there was a procedure,</p> <p>24 and they had to sign contracts.</p> <p>25 Q. Was that a written procedure?</p>

<p style="text-align: right;">Page 90</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. Oh, you mean written</p> <p>3 procedure?</p> <p>4 Q. Yes.</p> <p>5 A. Could be. I don't know.</p> <p>6 Maybe it was oral procedure.</p> <p>7 Q. Like a manual or --</p> <p>8 A. No, I'm not aware of a manual.</p> <p>9 Q. And if there was a written</p> <p>10 procedure, where would it have been</p> <p>11 maintained?</p> <p>12 A. If there was?</p> <p>13 Q. Yes.</p> <p>14 A. I don't know. I cannot tell</p> <p>15 you. There isn't such a thing.</p> <p>16 Q. Have you ever seen one?</p> <p>17 A. What, a written manual?</p> <p>18 Q. Well, a page, or a pamphlet, a</p> <p>19 stapled document.</p> <p>20 A. If it had to do with HR, it</p> <p>21 would be in HR, it would be in the legal</p> <p>22 department. I don't know this kind of --</p> <p>23 we did not have a manual for that, so I</p> <p>24 cannot tell you where we put it. It's</p> <p>25 speculation.</p>	<p style="text-align: right;">Page 92</p> <p>1 JOSEPH BAMIRA</p> <p>2 them, or something like that. And so she</p> <p>3 did ask around, but I don't know. There</p> <p>4 was no manual or checklist, to my</p> <p>5 knowledge. But I know that she asked.</p> <p>6 By the way, when I said</p> <p>7 independently, I think the name came to</p> <p>8 her attention and she asked about it, and</p> <p>9 she said she specifically did not want to</p> <p>10 work with them.</p> <p>11 MS. LIM: Could you repeat</p> <p>12 that last sentence.</p> <p>13 (Requested portion of record</p> <p>14 read.)</p> <p>15 A. They asked, I said, not she</p> <p>16 asked. It came to her attention, and she</p> <p>17 asked about it, and we did not want to</p> <p>18 work with them subsequently. That's what</p> <p>19 she was telling me.</p> <p>20 Q. So apart from Daphne calling</p> <p>21 the people at ADT, do you know of any</p> <p>22 efforts that Daphne made to ensure that</p> <p>23 the third-party vendors that she was</p> <p>24 engaging were reliable or responsible</p> <p>25 vendors?</p>
<p style="text-align: right;">Page 91</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. You have never seen any</p> <p>3 writings in the company about this is</p> <p>4 what we do, this is a checklist -- for</p> <p>5 example, this is a checklist of things to</p> <p>6 make sure that this company is able to do</p> <p>7 before we decide to hire them to perform</p> <p>8 one of our contracts? You never saw</p> <p>9 anything?</p> <p>10 A. A written instruction? I</p> <p>11 haven't seen it. There might have been,</p> <p>12 but I haven't seen it.</p> <p>13 Q. And your only knowledge of any</p> <p>14 efforts to investigate a third-party</p> <p>15 vendor before hiring them is Daphne</p> <p>16 mentioning to you that "they" made that</p> <p>17 investigation?</p> <p>18 A. I think she asked. I think</p> <p>19 she asked sometimes and if it was ADT. I</p> <p>20 think she asked Dan Geiger at ADT if they</p> <p>21 heard about these people. Actually, I</p> <p>22 think she told me, if my memory doesn't</p> <p>23 fail me, that EMI got in touch with us,</p> <p>24 and she asked Dan Geiger, said they are</p> <p>25 not good people, and we did not work with</p>	<p style="text-align: right;">Page 93</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. I will assume she has. But</p> <p>3 you have to ask her what efforts she</p> <p>4 made.</p> <p>5 Q. I am asking if you have any</p> <p>6 knowledge.</p> <p>7 A. No. Except for her to say to</p> <p>8 me she has.</p> <p>9 Q. Did she explain?</p> <p>10 A. No.</p> <p>11 Q. Did she ever tell you of any</p> <p>12 measures that she took, any</p> <p>13 questionnaires she offered them to ask</p> <p>14 for information?</p> <p>15 A. I cannot recall that.</p> <p>16 Q. Did she ever check with the</p> <p>17 Better Business Bureau of their location,</p> <p>18 to see if there were complaints filed</p> <p>19 against them?</p> <p>20 A. I don't know that.</p> <p>21 Q. Or whether they were</p> <p>22 capitalized?</p> <p>23 A. I don't know that.</p> <p>24 Q. Or whether they had another</p> <p>25 history of complaints that the company</p>

<p style="text-align: right;">Page 94</p> <p>1 JOSEPH BAMIRA</p> <p>2 had received? Did they ever ask about</p> <p>3 whether they had a history of any alleged</p> <p>4 violations of the TCPA?</p> <p>5 A. I don't know if she has or if</p> <p>6 she hasn't.</p> <p>7 Q. Did she ever check to see if</p> <p>8 any of the proposed vendors had judgments</p> <p>9 entered against them for TCPA violations?</p> <p>10 A. I don't know what she asked,</p> <p>11 so if I cannot tell you. If I don't know</p> <p>12 what she asked, I don't know any</p> <p>13 particular line item if she asked or not.</p> <p>14 Q. What was Daphne's title?</p> <p>15 A. I can't recall. We changed</p> <p>16 titles three or four times. I don't</p> <p>17 know. I don't remember.</p> <p>18 Q. Do you remember any of them?</p> <p>19 A. No. I'm not good at that. I</p> <p>20 usually disregard titles.</p> <p>21 Q. Do you remember what her</p> <p>22 salary was?</p> <p>23 A. Not either, no.</p> <p>24 Q. Did she make more than \$50,000</p> <p>25 a year?</p>	<p style="text-align: right;">Page 96</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. Currently?</p> <p>3 Q. In 2011.</p> <p>4 A. I don't remember who it was.</p> <p>5 We changed.</p> <p>6 Q. Would that have been Daphne?</p> <p>7 A. I don't think so, but I don't</p> <p>8 know. We changed functions and moved</p> <p>9 people around quite frequently, so it's</p> <p>10 very hard for me, especially when you are</p> <p>11 asking about a particular year. It's</p> <p>12 hard for me to tell.</p> <p>13 Q. Can you give me, to the extent</p> <p>14 that you can recall, can you give me a</p> <p>15 list of individuals who from time to time</p> <p>16 had been responsible for TCPA compliance</p> <p>17 matters in the company? If you work</p> <p>18 backward from the current persons, until</p> <p>19 you run out of names.</p> <p>20 A. I can't. I just mentioned two</p> <p>21 names to you, which I mentioned before.</p> <p>22 I don't remember the other names. Maybe</p> <p>23 if I give it some time I can think of a</p> <p>24 couple of names more. But I don't</p> <p>25 remember.</p>
<p style="text-align: right;">Page 95</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. Yes.</p> <p>3 Q. More than a hundred?</p> <p>4 A. I don't know. She might. I</p> <p>5 don't know.</p> <p>6 Q. More than 150?</p> <p>7 A. I don't think so.</p> <p>8 Q. And when was Daphne hired?</p> <p>9 A. I'm not sure. 2006, 2005.</p> <p>10 Q. So she was with the company a</p> <p>11 long time?</p> <p>12 A. Yes.</p> <p>13 Q. Is she still employed by the</p> <p>14 company?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what her current</p> <p>17 title is?</p> <p>18 A. No.</p> <p>19 Q. You don't pay attention to</p> <p>20 titles.</p> <p>21 A. No. Sorry. Maybe I should,</p> <p>22 but I don't.</p> <p>23 Q. That's okay. Life is short.</p> <p>24 Who in the company is in</p> <p>25 charge of TCPA compliance?</p>	<p style="text-align: right;">Page 97</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. What were the names? I'm</p> <p>3 sorry, I don't remember you giving me</p> <p>4 names before.</p> <p>5 A. I gave you two names before,</p> <p>6 James Flynn and Mary Couton, or something</p> <p>7 like that. Didn't I say that?</p> <p>8 Q. I don't believe so.</p> <p>9 A. I'm quite sure I did.</p> <p>10 Q. Flynn is one?</p> <p>11 A. James Flynn, right.</p> <p>12 Q. James Flynn, you said?</p> <p>13 A. Um-hum.</p> <p>14 Q. And the second one was?</p> <p>15 A. Mary Couton.</p> <p>16 Q. Do you remember what Mr.</p> <p>17 Flynn's title is?</p> <p>18 A. He was executive vice</p> <p>19 president.</p> <p>20 Q. What were his functions in the</p> <p>21 company?</p> <p>22 A. He was responsible for vendors</p> <p>23 relationship primarily in the -- even in</p> <p>24 ADT, I think. I'm not really sure. You</p> <p>25 are going to have to ask him.</p>



<p style="text-align: right;">Page 98</p> <p>1 JOSEPH BAMIRA</p> <p>2 But, for the most part, for</p> <p>3 vendor relationships, and for the</p> <p>4 compliance. And he wasn't for the</p> <p>5 compliance all the time. But I'm not</p> <p>6 sure since when. But he was an executive</p> <p>7 vice president.</p> <p>8 Q. When you say he was in charge</p> <p>9 of compliance, was he in charge of the</p> <p>10 compliance department or was he in charge</p> <p>11 of the kind of compliance issues that we</p> <p>12 have been talking about today?</p> <p>13 A. No, no, no. He was</p> <p>14 ultimately -- he was not the head of</p> <p>15 compliance. They reported to him. Okay?</p> <p>16 He was not the head of the compliance</p> <p>17 department. They reported to him, I</p> <p>18 think, as the executive in charge of</p> <p>19 that.</p> <p>20 Q. And Couton?</p> <p>21 A. She was the head. She was the</p> <p>22 direct head of compliance. But there</p> <p>23 were a few others, and I don't remember</p> <p>24 their names.</p> <p>25 Q. When you say head of</p>	<p style="text-align: right;">Page 100</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. I think after the institution</p> <p>3 of the lawsuit, but I don't remember when</p> <p>4 exactly.</p> <p>5 Q. I believe it was your</p> <p>6 testimony that Dan Geiger, that Daphne</p> <p>7 had inquired about the engagement of EMI</p> <p>8 with Dan Geiger, and Dan Geiger said that</p> <p>9 they were bad people. Is that fair?</p> <p>10 A. No. I said what Daphne told</p> <p>11 me, on several occasions, independent of</p> <p>12 this particular situation, sometimes in</p> <p>13 the past I think EMI got in touch with</p> <p>14 her, or however she learned about them,</p> <p>15 and she inquired about them, if they are</p> <p>16 good people or not, and she was told that</p> <p>17 they weren't. That's what Dan Geiger</p> <p>18 told her. But not in connection to that.</p> <p>19 Independently of that.</p> <p>20 Q. So that was another time?</p> <p>21 A. It's another time, yes.</p> <p>22 Q. I believe it was your</p> <p>23 testimony just now that you were not</p> <p>24 aware of EMI before the commencement of</p> <p>25 this lawsuit. Is that correct?</p>
<p style="text-align: right;">Page 99</p> <p>1 JOSEPH BAMIRA</p> <p>2 compliance, you are talking about the</p> <p>3 compliance department?</p> <p>4 A. Yes.</p> <p>5 Q. And we agreed earlier that the</p> <p>6 compliance department wasn't involved in</p> <p>7 the issues that we have been discussing</p> <p>8 here today. Is that correct?</p> <p>9 A. Correct.</p> <p>10 Q. They listened to phone calls</p> <p>11 that are coming in to Elephant Group to</p> <p>12 ensure compliance with the</p> <p>13 requirements --</p> <p>14 A. If there were complaints, they</p> <p>15 were involved. If there were phone calls</p> <p>16 that people didn't record, or things like</p> <p>17 that. But they were not in charge of</p> <p>18 implementation. That they were not.</p> <p>19 Can I ask for five minutes?</p> <p>20 Q. Absolutely.</p> <p>21 (A recess was taken.)</p> <p>22 BY MR. McNEW:</p> <p>23 Q. We talked a little bit about</p> <p>24 EMI. When did you first become aware of</p> <p>25 a company called EMI?</p>	<p style="text-align: right;">Page 101</p> <p>1 JOSEPH BAMIRA</p> <p>2 A. That's correct.</p> <p>3 Q. Do you know if Daphne had any</p> <p>4 knowledge of EMI's work with Paramount</p> <p>5 before the lawsuit?</p> <p>6 A. I can only tell you what she</p> <p>7 told me, and the answer was no.</p> <p>8 Q. Do you know anything about the</p> <p>9 relationship between Paramount and EMI?</p> <p>10 A. Not whatsoever.</p> <p>11 Q. Do you know if they provided</p> <p>12 any compliance guidelines to EMI?</p> <p>13 A. I don't know. But I think the</p> <p>14 head of Paramount had a deposition, and</p> <p>15 maybe you asked him. I don't know.</p> <p>16 Q. I'm guessing from your</p> <p>17 testimony that Elephant Group had no</p> <p>18 contact with EMI before the lawsuit.</p> <p>19 A. No.</p> <p>20 Q. Any after the lawsuit?</p> <p>21 A. No.</p> <p>22 Q. With respect to the mediation,</p> <p>23 you testified that you attended two of</p> <p>24 the three sessions. Is that correct?</p> <p>25 A. Correct.</p>



<p style="text-align: right;">Page 102</p> <p>1 JOSEPH BAMIRA</p> <p>2 Q. Was there anyone else at</p> <p>3 Elephant Group --</p> <p>4 A. I'm sorry.</p> <p>5 Q. Was there anyone else at</p> <p>6 Elephant Group who participated in the</p> <p>7 mediations?</p> <p>8 A. In the one in Boston?</p> <p>9 Q. Yes.</p> <p>10 A. No. Just myself and Jim</p> <p>11 Schultz.</p> <p>12 Q. Is it your view that Elephant</p> <p>13 Group is responsible under the ADT</p> <p>14 contract to indemnify ADT for the Desai</p> <p>15 settlement?</p> <p>16 A. My view is that they are not.</p> <p>17 Q. And why not?</p> <p>18 A. Because I think --</p> <p>19 MR. SCHULTZ: Let me first</p> <p>20 object to the extent that anything</p> <p>21 you would say would be informed by</p> <p>22 or relate to any discussions we</p> <p>23 have had regarding the merits of</p> <p>24 the case. If you could testify as</p> <p>25 to what you personally believe</p>	<p style="text-align: right;">Page 104</p> <p>1 JOSEPH BAMIRA</p> <p>2 come to us. We had nothing to do with</p> <p>3 the calls. We have not made the calls.</p> <p>4 Nobody on our behalf. We are not the</p> <p>5 beneficiaries of the calls. We haven't</p> <p>6 received commission for the calls. So</p> <p>7 there's nothing there which connects us</p> <p>8 to this particular case. Except that we</p> <p>9 are part of ADT's marketing operation.</p> <p>10 And I believe that it is very difficult,</p> <p>11 that's my opinion, it's very difficult to</p> <p>12 come and say, okay, there's 13 people,</p> <p>13 you all have to indemnify us for the same</p> <p>14 acts. There's got to be some sort of --</p> <p>15 well, that's my legal interpretation. It</p> <p>16 has to really come and say it's because</p> <p>17 of you, here's the evidence, you did it.</p> <p>18 I did not see such evidence.</p> <p>19 That's why I did not want to participate</p> <p>20 in the mediation. I did not think we</p> <p>21 belonged in that lawsuit. I think it was</p> <p>22 ADT thrashing out, trying to find</p> <p>23 somebody to foot the bill.</p> <p>24 Q. And when you said through that</p> <p>25 answer "we did not do," you were speaking</p>
<p style="text-align: right;">Page 103</p> <p>1 JOSEPH BAMIRA</p> <p>2 outside of anything you have</p> <p>3 learned from or you discussed with</p> <p>4 counsel, can you answer that</p> <p>5 question.</p> <p>6 A. I will not voice -- not</p> <p>7 because of him, but I will not voice a</p> <p>8 legal opinion.</p> <p>9 Q. Let me clarify. To the extent</p> <p>10 that you have an understanding of the</p> <p>11 company's responsibilities, whether oral</p> <p>12 or legal, you are obliged to give them to</p> <p>13 me. You are not allowed to disclose a</p> <p>14 communication that you have had with your</p> <p>15 lawyers.</p> <p>16 A. I understand.</p> <p>17 Q. So no communications with</p> <p>18 them. But to the extent you have an</p> <p>19 understanding of the law, you have to</p> <p>20 explain that to me.</p> <p>21 A. Nobody showed me any evidence</p> <p>22 at the time that we were involved in</p> <p>23 these two particular calls, or however</p> <p>24 many calls there were, to these two</p> <p>25 particular plaintiffs. The calls did not</p>	<p style="text-align: right;">Page 105</p> <p>1 JOSEPH BAMIRA</p> <p>2 about Elephant Group; correct?</p> <p>3 A. That's correct, yes.</p> <p>4 MR. McNEW: I have no further</p> <p>5 questions.</p> <p>6 MR. SCHULTZ: Will read.</p> <p>7 (Time noted: 11:45 a.m.)</p> <p>8</p> <p>9</p> <p>10 JOSEPH BAMIRA</p> <p>11</p> <p>12 Subscribed and sworn to before me</p> <p>13 this ____ day of _____, 2014.</p> <p>14</p> <p>15 _____</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

1           JOSEPH BAMIRA  
2    I, JACK FINZ, Shorthand Reporter,  
3   certify that I was authorized to and  
4   did stenographically report the  
5   deposition of JOSEPH BAMIRA, the  
6   witness herein, on June 19, 2014' that  
7   a review of the transcript was  
8   requested; that the foregoing pages  
9   numbered from 1 through 105, inclusive,  
10   is a true and complete record of my  
11   stenographic notes of the deposition by  
12   said witness; and that this computer-  
13   assisted transcript was prepared under  
14   my supervision.  
15   I further certify that I am not a  
16   relative, employee, attorney or counsel  
17   of the parties, nor am I a relative or  
18   employee of any of the parties'  
19   attorney or counsel connected with the  
20   action.  
21   DATED this \_\_\_\_day of \_\_\_\_\_, 2014.  
22  
23                               \_\_\_\_\_  
24                               JACK FINZ  
25

[&amp; - arose]

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<b>&amp;</b> 2:9 54:8	<b>3</b>	<b>acquire</b> 53:15	<b>al</b> 1:8
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